

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16980 of 2016

=====

Union of India, through the Secretary, Ministry of Personnel Public Grievances and Pension, Department of Personnel and Training, New Delhi.

.... Petitioner

Versus

1. Aditya Kumar Das, Son of Late Sita Ram Das, resident of Village Navrtna Hata, P.S. Purnea, P.O. and District Purnea, presently posted as District Magistrate, Jehanabad.
2. The State of Bihar through Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, General Administration Department, Government of Bihar, Patna.

.... Respondents

=====

Appearance:

For the Petitioner:	Mr. S.D. Sanjay, Addl. S.G. and Ms. Kanak Verma, C.G.C.
For the Respondent no. 1:	Mr. Aditya Narain Singh and Mr. Ranvijay Narain Singh, Advocates.

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 21-12-2017

Heard Mr. S.D. Sanjay, learned Additional Solicitor General of India assisted by Ms. Kanak Verma, Central Government Counsel on behalf of the petitioner, and Mr. Aditya Narain Singh, learned Advocate assisted by Mr. Ranvijay Narain Singh, Advocate on behalf of the private respondent no. 1.

2. The present Writ Application has been filed by the Union of India for quashing the order dated 13.05.2016 passed by learned Central Administrative Tribunal, Patna Bench, Patna



(hereinafter referred to as 'the Tribunal') in Contempt Petitions no. 105, 106 and 107 of 2015 by which the learned Tribunal has rejected the Show Cause filed by the Union of India enclosing a speaking order dated 03.11.2015 showing compliance of the order dated 26.09.2014 passed in O.A. No. 800 of 2013. While rejecting the Show Cause of the Union of India, the learned Tribunal made some observations by which, according to the petitioner, the Tribunal has gone beyond its jurisdiction in the contempt matters in giving such observations, and therefore, the present Writ Application.

3. Learned Senior Counsel representing the Union of India submits that earlier the respondent no. 1, who happened to be a member of Bihar Administrative Service (in short, 'BAS') on his promotion to Indian Administrative Service cadre (hereinafter referred to as 'IAS') was considered against the allotment year 2006 and because he had completed only 17 years of service as BAS officer he was found entitled for the maximum weightage of 4 years and thus taking his select year as 2010 he was allotted the year of allotment as 2006 as per the notification dated 18.04.2012.

4. It is the case of the Union of India that as the respondent no. 1 was appointed to IAS cadre vide notification dated 02.11.2012 on the basis of inclusion of his name in the Select List of 2010 prepared against the vacancies of the year 2010, the Govt. of India



vide its letter dated 22.04.2013 sent a proposal to the Department of Personnel & Training, Govt. of India (DOPT) for fixation of seniority / year of allotment of the promotee IAS officers including the respondent no. 1. In this communication, the Govt. of Bihar had intimated that the respondent no. 1 was holding continuous service in State Civil Services not below the rank of Deputy Collector or equivalent with effect from 01.03.1993. Thus, according to the Union of India, following the provisions as contained in Rule 3(3)(ii) of IAS (Regulation of Seniority) Rules, 1987, the year of allotment of the respondent no. 1 was fixed keeping in view the date of continuous appointment as Deputy Collector or equivalent as on 01.03.1993 when he was appointed in BAS cadre. The respondent no. 1 was accordingly allotted year 2006 as his allotment year vide order dated 30.04.2012. It is the specific case of the Union of India that allotment was done by taking into consideration the date of continuous appointment of the respondent no. 1 on the post of Deputy Collector on 01.03.1993 which was intimated by the State of Bihar.

5. Learned Senior Counsel further submits that the dispute in the present case has arisen only because the respondent no. 1 claims that his continuous service on the post of Deputy Collector or equivalent post should be considered with effect from 17.02.1982 as, according to the respondent no. 1, he came in the service of Indian Air



Force on 17.02.1982 and, later on, when he got appointed and joined BAS cadre as Deputy Collector on 01.03.1993, by virtue of the then prevalent policy decision of the Government of Bihar dated 26.08.1972, the benefit of past service in Defence was also calculated for purpose of his seniority and following the same the seniority of the respondent no. 1 was fixed with the officers of 28th Batch of Bihar Public Service Commission. It is further pointed out that in the year 2005 when the State Govt. sought to withdraw the said policy decision dated 26.08.1972 with retrospective effect, the respondent no. 1 along with another similarly situated officer challenged the withdrawal of their respective seniority by the State Govt. in CWJC No. 16064/2006 and the Hon'ble High Court vide its order dated 24.07.2007 had quashed the order of the State Government to the extent that the seniority earlier granted to the respondent no. 1 in view of his past service could not have been withdrawn. Pursuant to the said order of the Hon'ble High Court, the seniority of the respondent no. 1 was restored taking his date of appointment as 17.02.1982.

6. Learned Senior Counsel has taken us through the order of the learned Tribunal and pointed out that in view of the said fact-situation when the respondent no. 1 went to the Tribunal with his grievance against his getting the allotment year 2006, the Tribunal framed a question for consideration which is reflected in Paragraph 7



of the order dated 26.09.2014 passed in OA No. 800 of 2013.

Paragraph 7 of the order passed by the Tribunal in OA No. 800 of 2013 is quoted hereunder for a ready reference.

“7. From the perusal of pleadings, it transpires that the main issue involved in this case is whether the date of seniority to the post of Bihar Administrative Service, i.e. Dy. Collector or equivalent would be taken into consideration as 1.1.1993, when the applicant joined BAS cadre or from 17.02.1982 by taking into account the past service rendered by him in Indian Air Force as per judgment dated 24.07.2007 and subsequent OM dated 14.01.2008. As per the DOPT, since they have received the date of seniority as on 01.03.1993 in respect of the applicant from the State of Bihar thus on the basis of that they have allotted the year of allotment as 2006 to the applicant. However, according to State of Bihar since the applicant was appointed to the post of Dy. Collector in BAS cadre on 01.01.1993, the DOPT has rightly allotted the year of allotment as 2006. However, it is noted that the submission of the applicant that his seniority was counted after taking into account his past service rendered by him in Indian Air Force as per the provisions of Indian Administrative Service (Regulation of Seniority) Rules, 1987, which has been affirmed by the Hon’ble High Court, Patna and subsequently vide order dated 14.01.2008 (Annexure A/10), the State of Bihar had restored the seniority position of the applicant w.e.f. 17.02.1982, which fact has not been denied by the State of Bihar.”

7. The Tribunal was of the view that seniority of the respondent no. 1 was fixed from 17.02.1982, therefore, the same should be the basis of allotment year in IAS cadre on his promotion. Since the representation of the respondent no. 1 was pending with the DOPT, the Tribunal in the operative part of its order issued the



following directions:-

“10. In view of the above, 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 Dy. Collector or equivalent in BAS 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 the IAS to the applicant afresh as per rules within a period of three months from the date of receipt of communication from State Government.”

8. The learned Senior Counsel has further drawn our attention towards the speaking order dated 03.11.2015 (Annexure R-1 to the CCPA No. 107 of 2015 which has been brought on record by way of a supplementary affidavit on behalf of the respondents) to show that pursuant to the order passed by the Tribunal in OA No. 800 of 2013 a fair consideration has been given to the representation of the respondent no. 1 and after taking note of the factual situation emerging from the records and then the judicial pronouncements of the Hon'ble Supreme Court in **Bharat Petroleum Corporation Ltd. & Anr. Vs. N.R. Vairamani & Anr.**, reported in **AIR 2004 SC 4778**, the competent authority held that the request of the respondent no. 1 for ante-dating his seniority in IAS cadre by treating the service



rendered by him in Indian Air Force is not found to be in accordance with Regulation 3(3)(ii) of IAS (Regulation of Seniority) Rules, 1987, therefore, the representation of the respondent no. 1 has been rejected.

9. Learned Senior Counsel submits that it is this speaking order dated 03.11.2015, which was filed with the Show Cause in the Contempt Applications, which has been rejected by the learned Tribunal. While rejecting the show cause the Tribunal proceeded to hold as under:-

“..... From perusal of the aforesaid letter, we are of the view that when this Tribunal in its judgment has clearly 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.
.....”

10. Learned Senior Counsel submits that the Tribunal has in fact been unable to appreciate the distinction between giving seniority by the State Govt. on the post of Deputy Collector in BAS cadre taking note of the past service rendered by the respondent no. 1 in Indian Air Force with effect from 17.02.1982 and that of treating the post held by the respondent no. 1 in Indian Air Force as equivalent to the post of Deputy Collector in BAS cadre. According to him, in the speaking order it has clearly been pointed out that the State Govt. has still not categorically communicated about the equivalence of post



held by the respondent no. 1 in Indian Air Force with that of Deputy Collector in BAS cadre. It is pointed out that in terms of Regulation 3(3)(ii) of IAS (Regulation of Seniority) Rules, 1987, the year of allotment of a promotee officer has to be determined with reference to the year for which the meeting of the committee to make selection to prepare a select list on the post on which he was appointed to the service was held and with regard to the continuous service rendered by him in the State Civil Services not below the rank of a Deputy Collector or equivalent before the 31st day of December of the year, before the year for which the meeting of the committee to make selection was held to prepare the select list on the post on which he was appointed to the service in the manner prescribed under clause (a) and (b) mentioned thereunder. According to clause (a), for the services rendered by a promotee upto 21 years he shall be given a weightage of 1 year for every completed 3 years of service, subject to a minimum of 4 years. In the present case, the respondent no. 1 has been given the weightage of minimum 4 years.

11. Thus, it is the submission of the learned Senior Counsel that the Tribunal has gone beyond its jurisdiction in taking a view as quoted here-in-above because till today the State Govt. has not come out with any notification granting equivalence to the post held by the respondent no. 1 in Indian Air Force with that of the post



of Deputy Collector in the State of Bihar. So far as the order dated 24.07.2007 and the consequent memorandum dated 14.01.2008 are concerned, those were relevant only for purpose of granting seniority to the respondent no. 1 on the post of Deputy Collector by virtue of the policy decision of the Govt. of Bihar which was with a pious intention to respect the Army personnel / officers, who had fought in the Indian Army in the 1971 war. The respondent no. 1 has availed the benefit of the said policy decision which was later on withdrawn but because the Hon'ble Court held that there cannot be a retrospective withdrawal, therefore, the respondent no. 1 was able to maintain his seniority in BAS cadre by taking note of his appointment in Indian Air Force.

12. The Tribunal, according to the learned Senior Counsel, has been misled to understand that the seniority in BAS cadre alone will confer an equivalence of the post held by him in Indian Air Force with that of the post of Deputy Collector. He has explained that while conferring equivalence to a post many things are required to be considered by the government, particularly the nature of duty attached to a post which is sought to be made equivalent to another post. In the present case, no such exercise has been done by the State Govt. and till today there is no notification conferring equivalence of the post. It is thus submitted that the impugned order dated 13.05.2016 passed by



the learned Tribunal is bad in law and the Tribunal has gone beyond its jurisdiction not only by rejecting the Show Cause but also recording its view afresh without appreciating the core issue.

13. Learned Senior Counsel has also placed reliance upon the judgment of the Hon'ble Supreme Court in the case of **R. Mahajan & Ors. Vs. Shefali Sengupta & Ors.**, reported in (2012) 4 SCC 761, to submit that a Writ Application would lie in the present circumstance against the impugned order of the Tribunal.

SUBMISSION OF THE RESPONDENT NO. 1.

14. On the other hand learned counsel representing the private respondent no. 1 would submit that the Tribunal has rightly taken a view in its order dated 13.05.2016, which is impugned in the present Writ Application. According to the learned counsel, the view expressed by the Tribunal is nothing but a reiteration of the observations given by the Tribunal in its earlier order dated 26.09.2014 passed in OA No. 800 of 2013. Learned counsel also submits that while passing the order dated 26.09.2014 in OA No. 800 of 2013 the Tribunal directed the State of Bihar to communicate the correct date of seniority of the applicant, i.e., 17.02.1982 to the post of Deputy Collector or equivalent in BAS cadre to the DOPT and thereupon the DOPT had to consider the representation of the applicant regarding the year of allotment in IAS cadre keeping in view



the benefit of Defence Service already granted to the respondent no. 1 by the State Government while fixing his seniority in the year 1982. It is submitted that thereafter the Govt. of Bihar communicated vide letter no. 14314 dated 16.10.2014 issued by the General Administration Department to the Secretary, DOPT, Govt. of India giving the date of appointment of the respondent no. 1 in Bihar Administrative Service as 01.03.1993 and the date taken for considering his seniority in BAS cadre as 17.02.1982, thus the DOPT, Govt. of India was required to shift the date of allotment year of the respondent no. 1, but instead, the petitioner did not comply with the order dated 26.09.2014 and issued the letter dated 03.11.2015, as contained in Annexure R-1 to CCPA No. 107 of 2015. Thus, according to the learned counsel for the respondent no. 1, it is not a consideration in terms of the order passed by the learned Tribunal and, therefore, the Tribunal has committed no wrong by rejecting the Show Cause and thereby the speaking order dated 03.11.2015 issued under the signature of the Under Secretary to the Govt. of India, DOPT.

CONSIDERATION.

15. We have heard learned counsel for the parties and perused the records.

16. It is apparent from perusal of the order dated



26.09.2014 passed in OA No. 800 of 2013 that the State of Bihar was directed to communicate the correct date of seniority of the applicant-respondent no. 1 taking it to be 17.02.1982 on the post of Deputy Collector or equivalent in BAS cadre to the DOPT. Thereafter, the DOPT had to consider the representation of the respondent no. 1 regarding the year of allotment in IAS cadre keeping in view the benefit of Defence Service already granted to the applicant – respondent no. 1 by the State Govt. while fixing his seniority in the year 1982 as also the decision in the case of B.R. Verma, claimed to be similarly placed as that of the applicant. The Tribunal also directed the DOPT, Govt. of India to decide the matter of allotment of year of service of the applicant in IAS cadre afresh as per rules within a period of three months from the date of receipt of communication from the State Govt.

17. The essence of the order dated 26.09.2014 is that the DOPT, Govt. of India was directed to decide the matter of allotment of year afresh as per rules. Thereafter, the Govt. of Bihar communicated two things to the DOPT, Govt. of India – firstly, the date of continuous appointment of the respondent no. 1 on the post of Deputy Collector was shown as 01.03.1993 and then the DOPT was informed about the date, i.e. 17.02.1982 being the date taken into account for purpose of counting seniority of the respondent no. 1



because of his past service in Indian Air Force. It is thus clear that the first part of the order by which the Govt. of Bihar was directed to communicate the date of seniority of the respondent no. 1, i.e. 17.02.1982 to the post of Deputy Collector or equivalent in BAS cadre to DOPT had been complied with. Now, the DOPT, Govt. of India was required to consider the representation keeping in view the benefit of Defence Service already granted to the respondent no. 1 by the State Govt. as also the decision in the case of Sri B.R. Verma but the Tribunal made it clear in the operative part as contained in Paragraph 10 of the order dated 26.09.2014 that the consideration has to be afresh and as per rules. (Emphasis supplied)

18. It is in the aforementioned background that the DOPT, Govt. of India considered the representation of the respondent no. 1 and passed a reasoned and speaking order dated 03.11.2015 which is evident from Annexure R-1 to CCPA No. 107 of 2015 which has been brought on the record by way of a supplementary affidavit on behalf of the respondents.

19. We have perused the order dated 03.11.2015 only with an intention to find out whether despite passing of a speaking order on the representation of the respondent no. 1 the view taken by the Tribunal in the impugned order by which the Show Cause of the Union of India was rejected may be upheld by us. We find that the



order passed by the Union of India contains a consideration as to the date of seniority of the respondent no. 1 in BAS cadre shown as '17.02.1982', a consideration has also been given to the case of Sri B.R. Verma, an SCS officer of Himachal Pradesh, and then consideration has also been given to the relevant rules, i.e., Regulation 3(3)(ii) of IAS (Regulation of Seniority) Rules, 1987, which has been quoted in the speaking order. The order also contains some case laws referring the decisions rendered by the Hon'ble Supreme Court pointing out that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

20. In our considered opinion, by passing a reasoned and speaking order dated 03.11.2015 the Union of India has complied with the directions issued by the Tribunal in Paragraph 10 of its order dated 26.09.2014 passed in OA No. 800 of 2013. The Tribunal is not correct in rejecting the Show Cause along with the speaking order dated 03.11.2015 which was brought on the record before the Tribunal in contempt matters. We are also of the view that the observations given by the Tribunal in the impugned order have come up only because the Tribunal could not appreciate the issue in hand which is reflected in the speaking order passed by the DOPT, Govt. of India.

21. The impugned order dated 13.05.2016 passed by the



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. Before we part with this order, it is made clear that we have only taken note of the submissions of the parties and have confined our views to the impugned order passed in contempt matters. This is not to be taken as any opinion on the merits of the contentions of the parties arising out of 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 here-in-above.

(Rajeev Ranjan Prasad, J)

I Agree.
Ajay Kumar Tripathi, J.-

(Ajay Kumar Tripathi, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	28.11.2017
Uploading Date	21.12.2017
Transmission Date	N/A

