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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 29th March, 2019
Pronounced on: 2nd July, 2019*

+ **W.P.(C) 5648/2018 & CM APPL 22046, 27458 & 32283/2018**

THE STATE OF BIHAR THROUGH ITS CHIEF SECRETARY

..... Petitioner

Through: Mr. Devashish Bharukha, Addl.
Standing Counsel with Mr. Justine
George, Advocate

versus

DR. JITENDRA GUPTA & ANR. Respondents

Through: Mr. Sachin Datta, Sr. Advocate with
Mr. Sourabh Ahuja, Advocate for R-1
Mr. Arun Bhardwaj, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

1. The present writ petition has been filed by the State of Bihar, assailing the order passed by Central Administrative Tribunal, Principal Bench, New Delhi, dated 22.3.2018, by which the learned Tribunal has allowed the O.A. of respondent no. 1 herein and has directed respondent no. 2 herein/Union of India to consider the case of the applicant/respondent no. 1 for inter-state deputation to the State of Haryana under Rule 5(2) of IAS Cadre, Rules 1954, or for Central Government deputation under Rule 6 of the said Rules. Vide the same order, respondent no. 2-who is the petitioner herein, has been directed not to withhold its consent for the deputation, and to communicate its consent to the Union of India, whereafter Union of India has to issue

appropriate orders for inter-state deputation to Haryana or Central deputation, as deemed fit, after obtaining approval of the ACC.

2. The applicant in the O.A. (who is respondent no. 1 herein) is a 2013 Batch IAS Officer of Bihar Cadre. In December, 2015 he was posted as Sub-Divisional Officer/Sub-Divisional Magistrate in Mohania Sub-Division of Kainoor District of Bihar.

3. The case of Respondent No. 1 as pleaded in the O.A. was that the State of Bihar was afflicted with the menace of overloading of heavy vehicles. The transporters in connivance with some State Officials were permitting overloaded vehicles to ply on roads and this was causing fatal accidents leading to loss of human life, besides pollution, as well as damage to roads, highways, bridges and other properties. Vide letter dated 23.10.2013, the Transport Department authorized the SDOs of the State to take measures to curb the menace. Unfortunately, another illegal practice rampant in the State was that the police officials were stopping the trucks and heavy vehicles on NH-2 and unnecessarily challaning them. This unauthorised seizure and parking of the trucks and other vehicles was hindering the ongoing work of widening of NH-2, besides causing fatal accidents on daily basis. In fact, NHAI had through several letters, brought this to the notice of the concerned SPs and DSP, but police authorities chose not to take any action.

4. Respondent no. 1 being a dutiful officer chose to carry out the directives issued to him with all sincerity. In the lawful exercise of his duties, he took stern action against the transport *mafia* and other wrong doers

and was successful to a large extent in controlling the menace of illegal parking and overloading of the heavy vehicles.

5. This action by respondent no. 1 antagonised the transport *mafia* and thus it was the case of the applicant in the OA, that this led to the *mafia* hatching a conspiracy along with the Vigilance Bureau of the State Govt, to get him out of their way. This led to a false complaint being made against respondent no. 1 on 08.07.2016. The author of the complaint was a notorious *mafia* called Arvind Kumar Singh, who is a known criminal of Mohania and is a named accused in several FIRs, and has been in Jail for serious socio-economic crimes.

6. It was the case of respondent no. 1 that without permission of the competent authority, or a search warrant, the Vigilance Bureau searched his official residence in the night of 12.07.2016 and arrested him in the midnight. An FIR was lodged at Police Station, Patna, under Sections 7, 8, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The sum and substance of the allegations in the FIR was that respondent no. 1 had demanded money for release of the seized vehicles and on search, in a trap case, incriminating documents were found in his house. He suffered incarceration for several days.

7. Following the arrest, respondent no. 1 was placed under suspension on 20.07.2016. Chargesheet was framed on 08.12.2016 in departmental proceedings against him. However, the IAS Officers' Association, Bihar Branch protested against the illegal arrest and the high-handed action of the Vigilance Bureau, at the instance of the *mafia*, and a memorandum was submitted in this regard to the State of Bihar.

8. The FIR was challenged by respondent no. 1 before the High Court of Patna in Criminal Writ Jurisdiction Case No. 1000/2016, which was allowed and vide judgment dated 28.10.2016, the FIR was quashed. Relevant extracts of the judgment are as under:

“7. The petitioner’s side has drawn my attention to certain documents like gate receipts issued by the Government of Jharkhand, which show that the truck, in question, could not have been at the place alleged in the morning of 03.07.2016 and it has, therefore, been argued that the documents go to show that the whole case of the prosecution is based on falsehood and its continuance, therefore, so argued the learned counsel, would amount to abuse of the process of the court. As I proceed further, it would transpire that even the State concedes no occurrence, as alleged in the FIR, had taken place in the morning hours of 03.07.2016. The State, thus, I must hasten to point out, admits that the alleged occurrence of taking away of the document of the vehicle by the petitioner or his associates is completely false.

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26. At this juncture, the ratio, laid down in the case of State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, may be profitably invoked, wherein the Supreme Court while summarizing the discussion in paragraph 102, held against clause No. 5 that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, a case for quashing is made out. When the improbability of events, taking place on 03.07.2016, was brought to the notice of Court an attempt was made to change the very date of occurrence of offence.

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31. Because of what has discussed and pointed out above, this Court is clearly satisfied that the FIR and the

consequential investigation so far as the same relate to the present petitioner are concerned, it would be nothing but abuse of the process of Court. Necessarily, therefore, the FIR and the investigation so far as the same relate to the present petitioner need to be set aside and quashed.

32. In the result and for the foregoing reasons discussed above, the writ petition succeeds and the FIR, along with its consequential investigation, are hereby set aside and quashed.”

(emphasis supplied)

9. This judgment was challenged by the State Government before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 805/2017 which was dismissed at the admission stage, vide order dated 06.02.2017. Pursuant to the orders of the Courts, the State of Bihar, vide order dated 21.04.2017, reinstated respondent no. 1 in service; withdrew the departmental proceedings against him, and regularised the period of suspension and incarceration as period “spent on duty”.

10. Respondent no. 1 apprehended that there was a danger to his life and liberty, as he had taken the *mafia* head on, and the Police machinery was against him. He, therefore, made repeated requests to deploy a bodyguard to protect him. The Principal Secretary and the District Collector wrote letters recommending the deputation of a bodyguard, as the need to protect respondent no. 1 was perceived. However, no protection was granted. Faced with this situation, Respondent No. 1 made a representation dated 21.03.2017 to the Central Government, with copy to the State of Bihar, seeking inter-cadre transfer from Bihar to Haryana cadre, under the provisions of Rule 5(2) of the IAS (Cadre) Rules, 1954. This representation also achieved no success and therefore, respondent no. 1 fearing danger to his life and that of his family members, filed a petition under Article 32 of

the Constitution of India before the Supreme Court of India bearing W.P.(C) 338/2017. Vide order dated 09.05.2017, the Supreme Court directed the Central Government to look into the grievances of Respondent No. 1 and take appropriate action within three months from the date of the order. Further time of three months was sought by the Government to take a decision and the same was granted by the Supreme Court.

11. In order to process the matter further, the Central Government sought the consent of the State of Haryana. Significantly, the State of Haryana conveyed its 'no objection', vide letter dated 07.08.2017 for inter-cadre transfer to Haryana cadre.

12. However, the Central Government vide its order dated 06.12.2017, declined to permit inter-cadre transfer of the Respondent No. 1. This led to his filing an OA bearing No. 292/2018 before the learned Tribunal. The following prayers were made in the OA:

- “(i) quash and set aside the impugned order dated 6.12.2017 (Annexure A-1), as being unjust, arbitrary and unsustainable;
- (ii) direct respondent no. 1 to forthwith approve the inter-cadre transfer of the Applicant on a permanent basis to Haryana Cadre, in view of the “extreme hardship” faced by the Applicant and the concurrence accorded by the State Government of Haryana dated 7.8.2017.”

13. Before the learned Tribunal, respondent no. 1 pleaded that in terms of Rule 5(2) of the IAS (Cadre) Rules, 1954, inter-cadre transfer could be permitted on grounds of 'extreme hardship' and in his case, there was persistent threat to his life, in the State of Bihar. He pleaded that on account

of having taken the *mafias* and the conniving officials of the State Government head on, and curbing the menace that was going on, respondent no. 1 had now become their target and that there was a serious apprehension in his mind that his life and liberty was in danger. His family members, according to him, were also not safe and this was resulting in a lot of mental anguish to him, leading to health problems. The education of his children was also suffering and thus he should be moved out of the State of Bihar.

14. As the facts go, the Central Government had sought opinion from the Intelligence Bureau (IB) in regard to the threat perception of respondent no. 1 and was informed that no specific threat could be established during the discreet inquiries. The State of Bihar withheld its concurrence for the inter-cadre transfer of respondent no. 1. The contention of respondent no. 1, before the Tribunal, thus was, that withholding of the consent, coupled with the fact that while his reporting officer had given him 9.81 marks on a scale of 10 in his APAR, the reviewing authority in Patna had downgraded it to 6, reflected the extreme bias of the State against respondent no. 1. Another argument was that despite the IB report, the Secretary, DoP&T found merit in the grievance of respondent no. 1 and had recommended for approval of his inter-cadre transfer by the competent authority. He also contended, that the fact that the High Court of Patna had quashed the FIR, and the order was upheld by the Supreme Court was a pointer to the fact that false and frivolous allegations had been made against the applicant, to falsely implicate him and he was now an eyesore to the *mafia* and the colluding officers in the State. Article 14 of the Constitution of India, according to the applicant, was violated in his case, inasmuch, as, while several other officers had been allowed change of cadre on grounds which were of a lesser

‘hardship’, his case was being resisted out of sheer vendetta. He also pointed out names of several such officers whose inter-cadre transfers were allowed.

15. The respondents had filed separate replies before the learned Tribunal and had contested the case of the applicant. The stand of the State of Bihar was that they had forwarded the case of the applicant to the Central Government after offering their comments that there was no threat to respondent no. 1 which, in-turn, were based on the report of the Home Department of the State of Bihar, and it was the Central Government which had rejected the request of respondent no. 1.

16. The Central Government contested the case by stating that the change of cadre of an IAS officers is governed by Rule 5(2) of the IAS (Cadre) Rules, 1954 and read with OM dated 08.11.2004. There were certain parameters to assess the grounds of extreme hardship. The proposal was placed before the Committee headed by Secretary (Personnel), and the Committee had directed to seek an IB report regarding the threat perception. Since the IB had reported on 15.05.2017 that there was no specific threat, rather, there were doubts about the financial integrity of respondent no. 1, a decision was taken to reject the request of respondent no. 1 for inter-cadre transfer. It was submitted by the Central Government that, however, the proposal was again placed before the Committee in its meeting held on 17.08.2017 and this time the Committee, after detailed deliberations, recommended inter-cadre deputation from Bihar cadre to Haryana cadre for a period of three years. The recommendation was, however, rejected by the ACC vide the impugned order dated 06.12.2017. Justifying the decision, it was submitted that cases have to be decided on a case to case basis and there is no vested right in any officer to seek change of cadre.

17. The learned Tribunal, after going through the records and the pleadings, came to the conclusion that the apprehension of respondent no. 1 that there was a threat to his life and liberty, was not unfounded. The IB report was discarded by the learned Tribunal as the same appeared to be far from the ground realities, and rather smacked of mere rumours. The Tribunal took note of the recommendations for protection in favour of respondent no. 1, made by the Principal Secretary, Department of Environment and Forests, the District Collector, Patna, as also the fact that the FIR against him was quashed by the Patna High Court and order was upheld by the Apex Court. In fact, the Tribunal after narrating the chequered history of the case, observed that if respondent no. 1 was not taken out of Bihar, it could be a repeat of the Satyendra Dubey murder case, where a young engineer serving the Government department had lost his life in Bihar, on being murdered by the construction *mafia*. The Tribunal gave a categorical finding that from the records, they were convinced that the threats to respondent no. 1 warranted that he be pulled out of Bihar. The Tribunal also commented on the special and extraordinary resistance shown by the State of Bihar to let go respondent no. 1. In the special facts of the case, the Tribunal directed the Central Government to consider the case of respondent no. 1 for inter-state deputation to Haryana under Rule 5(2) of the IAS (Cadre) Rules, or for Central Government deputation under Rule 6 of the said Rules, with a further direction to the State of Bihar not to withhold its consent and communicate the same to the Central Government.

18. Before we deal with the contentious issues in the present case, two significant facts need to be noted at the outset. When the present writ petition came up for admission on 25.05.2018, learned Senior Counsel

appearing for the State of Bihar stated that the grievance of the petitioner was being confined to the directions issued in para 22(iii) of the impugned order, which was to the effect that the State of Bihar shall not withhold its consent and communicate the same to the Central Government. The counsel for the Central Government on advance notice, on instructions, had categorically stated that the Union of India did not propose to challenge the impugned order and, instead, was willing to make compliances, upon the State of Bihar communicating its consent. As a matter of record, Union of India has not filed any writ petition to assail the impugned order of the Tribunal, even though there are directions issued by the Tribunal against UOI.

19. At the initial stage of these proceedings, the controversy that needed to be adjudicated was whether the Tribunal could have directed the State of Bihar to convey its consent to the Central Government for inter-cadre transfer/deputation of respondent no. 1. However, with the passage of time and the subsequent developments in this case, which we note hereinafter, this controversy has, in fact, taken a backseat.

20. On 16.07.2018, this Court had directed the petitioner to produce the relevant records, since it was stated by the learned Senior Counsel for the petitioner that it was the IB report which had revealed that there was no threat perception to respondent No.1 this had formed the basis of such a decision. On 22.11.2018, the matter was heard for some time and the records of the GAD, State of Bihar and IB of the Central Government were directed to be kept available for perusal of the court, so as to see, how the exercise of threat assessment had been undertaken. On 11.12.2018, after some hearing,

the records were retained by this Court, for a detailed perusal and the matter was adjourned for further consideration.

21. On 18.01.2019, arguments were heard for some time but remained inconclusive. However, counsel for respondent No. 1 pointed out that the salary of respondent No. 1 has not been paid to him since July 2017 on the ground that he has not reported for duty in the State of Bihar. He submitted that there was no stay of the order of the learned Tribunal. Looking into the facts of the case, this Court had directed that the salary and the allowances be released to respondent No. 1 along with all arrears, and the petitioner was directed to continue to pay the same in future as well. We had also observed that it was open to the petitioner-State of Bihar, to avail his services in any establishment at Delhi.

22. We must now refer to a significant development which took place on 22.02.2019, when the matter was listed for further arguments. The records which had been perused by us revealed that, primarily, the conclusion of the IB that there was no threat perception, was based on the fact that no untoward incident had either occurred, or had been reported by respondent No. 1. It was also noticed in the report that neither respondent No. 1, nor any member of his family had filed any complaint, or an FIR, alleging any incident having occurred, and so there was no cause for any apprehension in the mind of Respondent No. 1 that his life was in danger. We found that the whole premise of the IB report was flawed and, thus, the decision of the State of Bihar to withhold its consent on such a report was arbitrary, as threat perception is an apprehension that a particular event is likely to occur, based, of course, on a certain foundation, and not, when the event actually happens. The incident involving false implication of Respondent No. 1 in a corruption

case by the Mafia – with the active connivance of the Vigilance Branch of the State of Bihar, was not even considered while assessing the threat perceived qua respondent No. 1.

23. We had categorically asked the learned counsel for the petitioner to address arguments on this aspect. Confronted with the findings in the report, the counsel submitted that he would take up the matter with the Secretary, Home Department, State of Bihar and hold consultations, in the hope that the matter is resolved at their level. Reposing faith in the statement made by learned counsel, we had adjourned the matter to report instructions.

24. On 29.03.2019, the learned counsel for the petitioner stated that he had deliberated the matter with the petitioner's officers, and after a detailed discussion, the State of Bihar had decided to convey its consent in favour of respondent No. 1. He handed over a compilation of documents running into 12 pages. He first drew the attention of the Court to a letter dated 05.03.2019, whereby the State of Bihar has conveyed its consent to the Under Secretary, DoP&T for three years central deputation of respondent No. 1, as also to a letter written in response thereto by the DoP&T to their Chief Secretary which is dated 26.03.2019. He also drew our attention to another letter addressed to the DoP&T by the State of Bihar, as well as to the guidelines enclosed in the compilation for central deputation. The submission was that the State of Bihar has finally agreed and has conveyed its consent for three years central deputation, but the Central Government had, in turn, sought the reason for the petitioner's consent, since respondent No. 1 had neither applied for central deputation, nor was he fulfilling the eligibility conditions for the same. He submitted that after the receipt of this

letter, the State has rendered its explanation to the Central Government for giving its no objection towards the central deputation of respondent No.1.

25. A copy of the compilation was handed over to the respective counsels for the respondents. The learned counsel for the Union of India only submitted that even assuming the respondent No. 1 was eligible for central deputation, he could not insist on being sent only to the State of Haryana, as it was the prerogative of the Central Government to decide the State to which he could be deputed. Counsel for respondent No. 1, reacting to the letters in the compilation, vehemently argued that this was yet another step which showed complete malafide intent on the part of the petitioner. He submitted that the State of Bihar was well aware of the Rules of central deputation and the eligibility therefor viz. nine years' service in the Indian Administrative Service, which the respondent did not meet and, yet, it chose to give its consent for central deputation. He submitted that this was a deliberate act and the consent was only a sham exercise, knowing very well that it was futile. He, argued that the consent by the State of Bihar be treated as a consent for inter-cadre transfer, since the same did not require nine years' service in the Indian Administrative Service, and the Central Government be directed to issue an order for inter-cadre transfer of respondent No. 1 to the State of Haryana, whose no objection has been received.

26. We have heard the learned counsels for the parties and also examined the rival submissions.

27. Learned counsel for the petitioner only reiterated the contention that in view of the stand taken by the petitioner before this Court on 25.05.2018, he will confine his argument only to the legal issue as to whether the learned

Tribunal could have given the direction-as it did, in para 22(iii) in the impugned order i.e. that the State of Bihar would not withhold its consent for inter-state deputation/central deputation, and communicate its consent to the Central Government. He argued that it is the prerogative and discretion of the State Government to decide whether it wants to relieve its officer on deputation, or otherwise, and it was neither in the domain nor the jurisdiction of the learned Tribunal to have issued such a direction.

28. *Per contra* learned counsel for respondent No. 1 submits that looking at the chequered history of the case, the threat perception, that there was threat to the life and liberty of respondent No.1, was well founded. The Tribunal after looking at the circumstances and the records had also found that indeed there was threat and in these circumstances, the Tribunal was justified in directing the State Government to give its consent, since the same was unreasonably withheld. He submitted that the Court while undertaking judicial review, would come to the rescue of a citizen, whose life is in danger, since protection of life and liberty of the citizens is of the greatest concern to the Court.

29. Next contention of the counsel for respondent no. 1 was that the resistance offered by the State Government to give its consent, itself is indicative of the fact that they do not want to lose their control over respondent No. 1, so that he can remain in their domain and jurisdiction and can be taken to task for challenging the prevalent and deeply entrenched Mafia and the officers of the State of Bihar, who stand exposed. He vehemently also argued that even during the pendency of the litigation, there have been certain instances which have strengthened the belief of respondent No. 1 that the intent of the State Government is malafide, and if he were to

return back to the State of Bihar, both his life and liberty were in complete danger.

30. In furtherance of his aforesaid submission, learned counsel points out that despite the Supreme Court having upheld the order of the Patna High Court quashing the FIR against him, he is still being shown on the official website of the Vigilance Department as a '*corrupt officer who was caught red-handed taking bribe*'. His reporting officer had, in his APAR for 2015-2016, graded him 9.8 on a scale of 10, but his reviewing officer downgraded it to 6. His representation against this is still pending from 25.11.2016. Though the period of suspension has been regularised, but no salary or allowances have been released for the said period. In fact, he was not even paid subsistence allowance for the period of suspension. He further points out that, even though, with the intervention of this Court, by the order dated 18.01.2019, the salary of respondent No. 1 has been released, but that is only for the post of Junior Time Scale. Respondent No. 1 has been promoted to Senior Time Scale in the meantime, but no emoluments of Senior Time Scale have been released. He further points out that the letter dated 25.03.2019 which has now been sent by the State of Bihar conveying their consent is, in itself, a pointer to the fact that the malafide and vindictive attitude of the State Government has not changed. The argument is that the State of Bihar knew that respondent No.1 was not eligible for central deputation on account of his not having qualifying service, yet it proceeded to give its consent for the central deputation. If the petitioner had nothing against respondent No.1, it would have conveyed its consent for inter-cadre transfer, which would have showed their bonafide. The exercise undertaken by the petitioner was only a sham, and an act of misguiding the Court.

31. The present is a classic case which presents the saga of an officer, who in discharge of his duty decided to take the transport *mafia* head-on in the State of Bihar. When the officer got posted as SDO/SDM in the State, he was tasked with the difficult job of curbing the illegal practices rampant in the State, where the transporters in connivance with the Authorities, were overloading the heavy vehicles and this was resulting in fatal accidents on a daily basis, apart from encouraging corruption. With the entire lobby of the *mafias* and some part of the State machinery, being against him as a wall, he decided not to give up his zeal to curb the menace. With all the resistance and obstructions in his path, he managed to accomplish the task given to him to a large extent. He succeeded in taking stern action against the transport *mafia* and the other wrongdoers. Needless to state, this invited the wrath of the lobby affected by the action and, subsequent thereto, the life of Respondent No. 1 took a different course. He was sought to be implicated in a false case of illegal gratification with the active involvement of the Vigilance Branch of the State administration, but, fortunately for him, unimpeachable evidence emerged to establish his false implication and, consequently, the FIR was quashed by the Patna High Court and the order was upheld by the Apex Court.

32. When notice was issued in the present writ petition, the grievance of the petitioner was confined to the direction issued in para 22(iii) of the impugned order, which is to the effect that the State of Bihar shall not withhold its consent for inter-State deputation/central deputation of Respondent No. 1 and communicate its consent to Respondent No. 2/UOI in that regard within four weeks from the date of receipt of a copy of the order. However, as narrated above, over a period of time, certain developments

took place and the petitioner has now conveyed its consent to the Central Government for central deputation. Thus, the challenge raised by the petitioner does not really survive. In our opinion, therefore, this Court need not delve into the legal issue on the jurisdiction of the Tribunal to direct the State Government to give its consent to deputation of an officer. However, we may only observe, that it would be very difficult for us to accept – as a broad legal proposition, that the Tribunals/Courts cannot issue such a direction under any circumstance. At the highest, what may be questioned by a party aggrieved with such quasi-judicial intervention, may be the justification for issuance of such directions in the facts of a given case. Since the Petitioner State has now, as a matter of fact, given its consent to Respondent No. 1 for being sent on central deputation for three years, our task is now confined to examining the action of the Petitioner in conveying the said consent, particularly in the light of the fact that Respondent No. 1 does not have the requisite qualifying service for central deputation under the Rules.

33. We have perused the letter dated 5.3.2019, addressed by the State of Bihar to the Central Government. We are indeed pained to note the contents of the said letter. Para 3 of the letter reads as under:

“3. In light of the above, consent of the Govt. of Bihar in connection with 3 years central deputation of Dr. Jitendra Gupta, IAS 9BH:2013) is hereby conveyed.
Encl.:- As above.”

34. The consent given by the State of Bihar is for three years’ central deputation. As per the guidelines placed on record by the petitioner itself, in order to be eligible for central deputation, an officer should have nine years’ qualifying service in the IAS. Conscious of this eligibility condition, the

State Government chose to process his case for central deputation and not inter-cadre transfer, for which such qualifying service is not a pre-requisite. We cannot, but, agree with the counsel for respondent No. 1, that if this was the eligibility condition, and respondent No. 1 did not fulfil the same, the exercise of giving consent by the petitioner was only a sham. The State Government knew very well that if this proposal was sent to the Central Government, it would be naturally rejected in terms of the prevailing Rules. It appears to us that this is nothing but yet another calculated act on the part of the State Government to delay the matter.

35. At this stage, we may observe that even the proceedings and the orders of this Court have been interpreted by the State Government to suit their own convenience. On 22.02.2019, when the matter was being argued and learned counsel for the petitioner was confronted with the contents of the IB report, the Court had expressed its anguish and concern on the manner in which the issue of threat perception had been looked at by the State Government. We were about to pass an order against the State Government, whereupon the counsel had himself offered to resolve the matter, in house, and advise the petitioner appropriately. This Court had never directed the State Government to give their consent for central deputation. However, the contents of the letter dated 26.03.2019 indicate, as though this Court had asked the State Government to process the case for central deputation and, which is why, such a proposal was initiated, and consent given. While we would not want to comment on this aspect and precipitate the issue, however, we may like to add a word of caution that proceedings of the Court, both oral and written, must not be misquoted by the parties, to suit their convenience.

36. Having said that, we feel that respondent No. 1 has been able to establish not only that the assessment of threat perception qua Respondent No. 1 is flawed – since the same fails to take into account the glaring false implication of Respondent No. 1 in a serious criminal case of corruption by the Mafia in active collusion of the Vigilance Branch of the State, but also the fact that there is real threat to his life and liberty in the State of Bihar, as also that even today the actions of the State Governments are aimed at his victimisation. We are constrained to come to this finding for more than one reason. Even after two courts have found in favour of Respondent No. 1 that he had been falsely implicated, the State Government chose to display on the website of its Vigilance Department, that he was a corrupt officer. The petitioner obviously chose to humiliate Respondent No.1 and, most unjustifiably, according to us. There is also force in the submission of counsel for respondent No. 1 that the witch hunt has continued, as is evident from the fact that his salary was not paid on time; his subsistence allowance was also not released; representation against his deliberate downgrading in the APAR is still pending; salary for his Senior Time Scale has been withheld and despite all this saga, there is pressure on him to go back and join in the State of Bihar.

37. The resistance of the State Government, even today, to let go of respondent No. 1 on an inter-cadre transfer is something that bewilders us. While on one hand, according to them, he is one of the most corrupt and tainted officers, yet every effort has been made to stall his movement out of the State cadre. Learned counsel for the petitioner was unable to respond to the query put by the Court, as to what is it, that the officer would gain by change of his cadre, except to protect his life and dignity. Correspondingly,

what is it that the State would lose if Respondent No. 1 is allowed to go on inter-State transfer. We are mindful of the fact that in normal circumstances, such like requests may be declined and inter-cadre transfers cannot be demanded by an officer, as a matter of right. However, as already noticed, this is not an ordinary situation that we are dealing with.

38. We have carefully analysed all the facts and circumstances of this case along with the records. We are of the considered view that, objectively assessed, it is unsafe for respondent No.1 to return to the State of Bihar. The decision of the State Government that there is no threat perception is based on the fact that the investigation reports have not pointed out to the happening of any untoward incident, and the failure of Respondent No. 1 to lodge an FIR of any such untoward incident. We cannot appreciate this stand of the State Government. Threat assessment has to be undertaken on the basis of the recent past incidents, and its assessment has to be done by those assigned that task on a rational basis, by taking into account all the relevant and germane circumstances and past incidents. In the present case, the State machinery – and that too its Vigilance Branch, was involved in falsely implicating Respondent No. 1. The game plan was to “fix” him for his misadventure of taking on the transport mafia. Thus, it is clear that the said Mafia, as well as some senior officers of the Vigilance Branch were out to get Respondent No. 1 because of the hinderances that he had caused in their illegal activities. Unfortunately, in the assessment made by the Petitioner, there is absolutely no mention of this aspect. The assessment has been made mechanically and completely mindlessly, by observing that there had been no incident of murderous attack on the Respondent No. 1 and he had not reported any such incident to the Police. Thus, the petitioner expects

Respondent No. 1 to suffer such an attack on himself and his family, before they will consider the threats to his and his family's lives to be serious enough to act. What about the false implication in a corruption case and the arrest of respondent No.1? Clearly the plan was to disable and neutralize respondent No.1 and to ruin his life and career. This approach of the petitioner is completely perverse, to say the least.

39. Despite several requests of respondent No. 1 to give him police protection, the State Government did not come to his aid. It is the duty of the High Court – which exercises extra ordinary writ jurisdiction, to protect the fundamental rights of the citizens. The right to life and liberty is the most precious of all the fundamental rights because, if this right is not protected, all others will become meaningless. Can we shut our eyes to the situation on hand, and let the situation come to a stage, when an untoward incident actually occurs and, God forbid, harm is caused to the officer or to his family? In our view, if we do not act in such a case where the facts cry out for help, we would be failing in our constitutional duty. The learned Tribunal in our view rightly observed that we cannot give rise to another case of Satender Dubey. We must, therefore, come to the aid of an officer, who showed courage in the discharge of his duty, and must protect his life and liberty. If we fail in our duty to protect a man, who has had the nerve to stand up against a *mafia* and the State machinery, we would be doing great disservice to the system and setting a bad precedent, where no officer would gather the courage to stand up against the wrongdoers.

40. We are confronted with a situation, where the consent of the State Government has been given for central deputation, but the Rules do not permit respondent No. 1 to go on central deputation, as he does not have nine

years' qualifying service. However, as noted above, there is no such requirement for inter-cadre transfer. In order to do substantial justice and in the exceptional and peculiar facts of this case, we direct that the consent of the State Government be treated as consent for inter-cadre transfer. This construction, we adopt, considering the fact that respondent No.1 had prayed for inter-cadre transfer in his original application; the Tribunal had directed the petitioner to give its consent/no objection, inter alia, to inter-cadre transfer and the State of Bihar, in principal, is now willing to let go of Respondent No. 1, at least for a period of three years on inter-State/central deputation. The cause for the threat to respondent No.1 viz. the transport mafia and the officers in the Vigilance department, who were gunning for Respondent No. 1 are going nowhere. They are where they were. Pertinently, there is nothing to show that the Petitioner-State of Bihar has taken any action either against the transport mafia, or against the Vigilance officers, involved in falsely implicating Respondent No. 1.

41. With the hope that a time never comes in our society where the honest are hounded and the corrupt rewarded, we quote a few lines of poet Laureate, Rabindra Nath Tagore, as under:

*“1. Where the mind is without fear and the head is held high
Where knowledge is free Where the world has not
broken up into fragments By narrow domestic walls
Where words come out from the depth of truth Where
tireless striving stretches its arms towards perfection
Where the clear stream of reason has not lost its way
Onto the dreary desert sand of dead habit Where the
mind is led forward by thee Into ever-widening thought
and action Into that heaven of freedom, my Father, let my
country awake.”*

42. Since we have construed the consent of the State of Bihar as a consent for inter-cadre transfer, we deem it fit to direct the Central Government to act on the said consent as one for inter-cadre transfer, and initiate the process for inter-cadre transfer of respondent no. 1 from the Bihar Cadre.

43. There is no doubt, that the decision on transfer of cadre falls in the domain of the Central Government, and it is the prerogative of the Central Government to examine the said issue. We have no intention, whatsoever, to interfere with the same. We would thus leave it to the Central Government to take a decision on the Cadre to which the respondent no. 1 should be transferred. We may, however, add a caveat, that the State of Haryana is the home State of respondent no. 1, and he had given a preference to be transferred to the said State. It is also undisputed that the State of Haryana has already conveyed its no-objection to such a transfer. Thus, while considering the case of Respondent No. 1 for inter-cadre transfer, this aspect may also be considered by the Central Government. The Central Government must complete the process of inter-cadre transfer as soon as possible, but not later than four weeks from the date of this judgment and till then *status quo* on the respondent no. 1 being placed at Delhi would continue. Needless to state that he would be paid his full salary including any arrears, if outstanding.

44. Learned counsel for respondent no. 1 has contended that Respondent No. 1 has suffered immense humiliation, loss of dignity, mental agony, and his entire family has suffered for the last several months. He has also been a victim of financial loss, social embarrassment, harassment and extreme hardship. He thus submits that respondent no. 1 is entitled to exemplary damages, not only in view of the victimization but also for malicious

prosecution. In support of his contention he has relied on the judgment of the Apex Court in the case of ***Ram Lakhan Singh Vs. State of U.P.*** reported as **(2015) 6 SCC 715** and also the judgment in the case of ***S. Nambi Narayanan Vs. Siby Mathews and Ors.*** in Civil Appeal Nos. 6637-38/2018 decided on 14.9.2018.

45. When the matter was listed on 8.2.2019 it was submitted by counsel for respondent no. 1 that he had approached the Apex Court to claim damages etc. on account of his false implication in a criminal case. Vide Order dated 01.02.2019, the Hon'ble Supreme Court has granted liberty to him to place all his submissions before this Court in the present proceedings.

46. Having traversed ourselves through the chequered history of the events and happenings in the life of Respondent no. 1 for several months – for which the State of Bihar is squarely responsible, we have no doubt in our mind that an IAS officer with courage and conviction, who in the discharge of his duty took on the transport mafia, has been compelled to undergo immense humiliation and harassment. Rather than rallying behind such an officer and providing protection to him, the State of Bihar has not only victimized him, but has treated him as *persona non-grata*. The actions of the State Government have led to a situation where, for several months, respondent no. 1 and his family members have undergone a huge turmoil. He had to flee from the State for his safety and well-being as well as of his family. In our view respondent no. 1 has been victimized without any rhyme and reason and his dignity and self-respect has been badly dented. The facts of this case thus warrant grant of adequate and commensurate compensation/damages under the public law remedy. The Constitutional Court is not debarred from exercising its extraordinary jurisdiction in

awarding compensation to a citizen, whose dignity and reputation has been harmed and who has suffered immense mental agony. In fact, to do so, we derive strength from the judgments of the Supreme Court in the case of *S. Nambi Narayanan (supra)* and *Ram Lakhan Singh (supra)*.

47. Right to life and liberty is the most sacred right enshrined in Article 21 of the Constitution of India. Thus, grant of compensation under Article 226 of the Constitution of India for violation of the fundamental right under Article 21 is an exercise which the High Court can undertake under Public Law jurisdiction, for penalizing the wrong doer and fixing the liability of a State, which has failed to discharge its public duty to protect its officer/citizen and his fundamental rights. Although, we cannot undo the harm caused to respondent no. 1 and put the clock back, or roll back the months that have been lost in his life under trauma, but we feel that awarding reasonable compensation as damages would perhaps apply some balm to his wounds, and would also uphold the rule of law. No amount of money would be enough to compensate Respondent No. 1, more particularly, for the days of his life when he was under incarceration, but if this Court were to grant some damages to respondent no. 1, perhaps his faith in the rule of law and virtues of honesty would be rekindled. If we do not compensate respondent no.1, we would only be rendering lip service to his right of life and personal liberty. We thus award a sum of Rs.5,00,000/- (Rupees Five Lacs) as compensation/damages in favour of respondent no. 1. The said compensation should be paid to him in a period of four weeks from today by the State of Bihar.

48. We thus find that there is no merit in the present petition and the same is dismissed with the following directions:-

- (i) The consent communicated by the State of Bihar to the Central Government vide letter dated 5.3.2019 for Central Deputation be treated as a consent for inter-cadre transfer. The Central Government is directed to initiate the process of inter-cadre transfer of the petitioner forthwith and issue an order transferring respondent no. 1 to a cadre outside the Bihar cadre. Needless to state that the willingness/consent of respondent no. 1 would also be sought for the inter-cadre transfer as per law. The entire process should be completed within a period of four weeks from today.
- (ii) The State of Bihar is directed to pay a sum of Rs.5,00,000/- (Rupees Five Lacs) towards compensation/damages in favour of respondent no. 1 within a period of four weeks from today, and to pay all other outstanding dues, which may not have been paid to him.

JYOTI SINGH, J

VIPIN SANGHI, J.

JULY 2nd, 2019 AK/rd/s