

PETITIONER:
DEVENDRA NARAYAN SINGH AND OTHERS

Vs.

RESPONDENT:
THE STATE OF BIHAR AND OTHERS

DATE OF JUDGMENT: 24/10/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIAK

ACT:

HEADNOTE:

JUDGMENT:

Hon'ble Mr. Justice G.B. Pattanaik
P.P. Rao, Sr. ADV., Vijay Kumar, J.P. Parihar, Abhay
Chandrakant Mahimka. Advs, with him for the appellants.
B.B. Singh, Adv. for the Respondents.

J U D G M E N T

The following Judgement of the Court was delivered:

PATTANAIAK, J.
Leave granted.

This appeal by special leave is directed against the order dated 5th September, 1995 of the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 12 of 1993. The appellants who had been recruited to the Bihar State Police Service in the year 1969 were promoted to the Indian Police Service in the year 1987 in accordance with the provisions of the Indian Police Service (Promotion by Recruitment) Regulations, 1955 (hereinafter referred to as the 'Promotion Regulations'). On being appointed to the cadre of IPS they were assigned the year of allotment as 1981 by the Central Government. They challenged the said order and claimed that their year of allotment should be 1979 before the Tribunal. The Tribunal by the impugned judgement rejected their claim and having dismissed the O.A., the present appeal has been preferred.

The case of the appellants in nutshell is that they having been appointed to the Bihar State Police Service on 1.9.1969 were eligible for being considered to be included in the Select List prepared under Regulation 5 of the Promotion Regulations since 1977. But the Committee constituted under Regulation 3 of the Promotion Regulations did not prepare any Select List for the years 1977, 1978, 1979 and 1980. It is only in 1981 a Select List of 18 officers was prepared to fill-up 7 vacancies ignoring one anticipated vacancy during the year. The further case of the appellants was that in the triennial review conducted for determining the strength of the cadre in the year 1981 the number of senior posts in the said cadre of IPS was increased to 137 from 123. But the Section Committee, though met on 14.10.1981, did not take the increase in the cadre strength as a result of which the appellants suffered to a great extent. A Writ Petition was filed in the Patna High

Court which was registered as CWJC No. 5372 of 1983. The High Court by order dated 30th July, 1984 came to the conclusion that the Selection Committee had committed an error by not taking into account the number of vacancies existing as well as number of vacancies likely to fall vacant during the year and accordingly directed the Selection Committee to prepare a fresh Select List for the year 1983. The State Government challenged the aforesaid order of the High Court by filing a Special Leave Petition in the Apex Court which was ultimately dismissed with the observation that the Selection Committee should prepare a fresh list for the year 1983 with respect to all the vacancies including the vacancies that occurred on account of triennial review by the authorities. Pursuant to the aforesaid direction of the Apex Court the Selection Committee met on 19.9.1985 and prepared a Select List of 24 officers including the appellants for promotion to the Indian Police Service and the appellants were ultimately appointed to the cadre of IPS on different dates in the year 1987. The earliest appointment being of appellant no.1 on 27.7.1987. The Ministry of Home Affairs thereafter issued order dated 4.5.1992 assigning the appellants the year of allotment as 1981. The appellants then challenged the same order of the Union Government claiming that the year of allotment should be 1979 on the ground that the Select List though was factually prepared in the year 1985 but in the eye of law it relates to the year 1983 and the Union Government has not taken that into consideration while assigning year of allotment. The Union Government contested the application before the Tribunal alleging therein that no doubt the Supreme Court had directed to draw a Select List for the year 1983 and the same was drawn on 9.9.1985 but the appellants having been appointed in the year 1987 pursuant to their name being included in the select List prepared on 19.9.1985, their year of allotment has been rightly fixed under Rule 3(iii) of the Indian Police Service (Regulation of Seniority) Rules, 1954 hereinafter referred to as the 'Seniority Rules' and therefore there is no error in determining the year of allotment of the appellants. The Tribunal by the impugned judgment came to the conclusion that the year of allotment of an officer has to be assigned in accordance with the Seniority Rules, more particularly Rule 3(3)(b) of the said Rules. The Tribunal also came to the conclusion that the question of assignment of year of allotment only arises after appointment of the concerned officer to the cadre either through competitive examination or by promotion from the State Police Service under Rule 9(1) of the Recruitment Rules. That being the position, taking into account the date of appointment of the appellants to the Indian Police Service Cadre and the date from which the concerned officer was actually included in the Select List as well as the date of continuous officiation of the appellants in a senior post, the year of allotment as determined by the Government is correct. The Tribunal was of the view that the appellants being in the Select List since 1986 and having been appointed in 1987 to the Indian Police Service Cadre. they cannot make any grievance of their year of allotment being fixed in the year 1979.

Mr. P.P. Rao, the learned senior counsel appearing for the appellants contended that the Tribunal committed an error in not considering that the Select List in which the appellants were included was in fact the Select List for the year 1983 and for the purpose of determining the year of allotment in the eye of law it must be deemed that the

appellants were in the Select List of the year 1983. Mr. Singh, the learned counsel for the State of Bihar on the other hand submitted that pursuant to the directions of the Patna High Court as well as the apex Court the State Government did consider the case of the appellants for being included in the Select List and in fact got their names included in the Select List but Union Public Service Commission did not approve the same earlier as a result of which the appellants could be appointed only in the year 1987 and as such for the selection made by the Union Public Service Commission as well as Union Government, the appellants cannot claim an earlier year of allotment. The stand of the counsel appearing for the Union of India on the other hand was, an officer gets included in the Select List only when the Select List prepared by the appropriate authority gets the approval of the Union Public Service Commission. That being the position and the Select List in question having been approved only in the year 1986, the Union Government rightly determined the year of allotment of the appellants.

In view of rival submissions at the bar the question that arises for consideration is whether the Union Government and the Central Administrative Tribunal were justified in coming to the conclusion that it is the date of factual inclusion of the appellants name in the Select List and their appointments to the Indian Police Service Cadre which would govern the year of allotment, notwithstanding the fact that earlier the Patna High Court and this Court had given directions that the appropriate authorities have committed error in not preparing the list for the year 1983 and the question of inclusion of the appellants name in the Select List for the year 1983 be reconsidered by the State Government.

Having given our anxious consideration to the relevant Provisions, Rules and the Regulations for appointment and for determination of the year of allotment and the earlier directions of the Patna High Court as well as of this Court, we find sufficient force in the contentions of Mr. P.P. Rao, the learned senior counsel appearing for appellants and we come to the conclusion that the Union Government has committed error in treating the appellants to have been included in the Select List only from the year 1986 which is the factual year of their inclusion in the list and thereby determining the year of allotment. We also come to the conclusion that the Tribunal committed error in ignoring the fact of the earlier direction of this Court and the legal fiction by which it must be held that the appellants were included in the Select List of the year 1983. It is not disputed that the Patna High Court as well as this Court had issued directions to consider the question of inclusion of appellants name in the Select List for the year 1983 and pursuant to such directions the State Government having re-considered the matter included the names of the appellants in the Select List. Though the list in question was made in the year 1985 pursuant to the direction of this Court and was approved by the Union Public Service Commission in 1986 but in the eye of law it must be deemed to be a list for the year 1983. When the appropriate authorities committed error in not preparing the Select List for the year 1983 and the appellants being aggrieved assailed the same and ultimately this Court directed to reconsider the matter, thereafter, the appropriate authority reconsidered the matter and included the appellants name in the Select List for the year 1986, in the eye of law the said Select List can be held to be the Select List for the

year 1983. Consequently the year of allotment of those who were included in the said list has to be determined on the basis that they were in the Select List of the year 1983 though factually the list was prepared in the year 1985 and was approved by the Union Public Service Commission in February, 1986. The Union Government, therefore, in our considered opinion committed serious error in determining the year of allotment of the appellants on the basis that they were in the Select List from the date of approval of the list by the Union Public Service Commission i.e. February 1986. The impugned order of the Tribunal as well as the order of the Union Government determining the year of allotment of the appellants are hereby set aside and the Union Government is directed to re-determine the year of allotment of the appellants on the premise that they were included in the Select List of 1983. Further the appellants are entitled for consequential benefits and the same may be given to them. This may be done within three months from the date of receipt of this order. The appeal is accordingly allowed but in the circumstances without any order as to costs.