

Central Administrative Tribunal, Principal Bench

Original Application No.986 of 2002

New Delhi, this the 18th day of November, 2002

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. V.K. Majotra, Member (A)

Mohd. Israr Khan  
Aged about 32 years  
S/o late Janab Man Khan,  
R/o Village Kanja Daspur  
Air Force Station, Bareilly,  
U.P. 243002

....Applicant

(By Advocate: Shri Sheikh Imran Alam)

Versus

1. Union of India through  
The Secretary  
Ministry of Personnel  
P.G. & Pensions, Department of  
Personnel and Training,  
North Block, New Delhi-1

2. Shri K.K. Sharma  
Desk Officer  
Ministry of Personnel  
P.G. & Pensions, Department of  
Personnel and Training,  
North Block, New Delhi-1

3. Union Public Service Commission  
Through Its Secretary,  
Dholpur House, Shahjahan Road,  
New Delhi

.... Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

In the Civil Services (Main) Examination, 1999, 620 vacancies belonging to various services were notified. However, ultimately after completion of the examination, a list of 411 candidates was issued. Out of this, 127 belonged to the Other Backward Class (OBC) category. 30 candidates out of the above said 127 OBC candidates had found their place in the final merit list on their own right. The applicant in the present application had figured at sr.no.304 in the combined merit list and 67 in

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the merit list limited to OBC candidates. He had shown preference for different services namely Indian Administrative Service, Indian Foreign Service, Indian Police Service, IC&CES, Pondicherry Civil Service, Indian Railway Police Service and Indian Revenue Service in that order. For the remaining services, he gave no preference. The U.P.S.C. had not allotted any service to him.

2. By virtue of the present application, the applicant seeks quashing of the letter of 25.1.2001 whereby his representation for allocation of service has since been rejected and he seeks a direction to allot him a suitable service as per his rank.

3. As referred to above, the grievance of the applicant basically is that he had scored well to be taken into some other service and in terms of the rules, he has a right to be allocated a service. He has further pleaded that he was misled by the advertisement/order issued in this regard by the U.P.S.C.

4. The respondents are contesting the present application. It has been pointed that the U.P.S.C. conducts Civil Services Examination every year. The successful candidates of the examination whose names are included in the merit list, are considered for allocation of service according to their rank in the merit list and preferences expressed by them for various services subject to their physical fitness for appointment to that service as also the provisions of Rule 2 and 18 of the Examination

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Rules where applicable. Clear cut instructions are issued relating to the manner in which Civil Services Examination would be conducted. It is statutory notification and every candidate is required to go through the same carefully. In terms of Rule 2 of the Civil Services Examination Rules, candidates are required to indicate preferences for various services in the order in which they would like to be considered for allocation. The Civil Services Examination Rules do not give any discretion to the Government in the matter of allocation of service. A candidate has to be allocated any service in accordance with his/her preference. The candidates are required to be careful while indicating preference for various services/posts. They are advised to indicate all the services/posts in the order of preference. Therefore it was incumbent upon the applicant to stick to the said preferences already given.

5. In the present case, applicant had given preference only for 7 services and had not given any preference for the remaining 17. According to provisions of rule 2, applicant was considered for allocation to a service, first according to his preference and thereafter to the residuary service in which there were vacancies. After allocation of candidates to a service in the order of their preference, the position in this regard of the last OBC candidate of the 7 preferences given by the applicant is -

<u>Services/Posts in the order</u>	<u>Rank of last OBC candi-</u>
indicated by applicant	date allocated the

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(Rank-304)	service/post
1. IAS	131
2. IFS	181
3. IPS	232
4. IC&CES	264
5. PONDICHERY (C)	No. vacancy
6. IRPS	299
7. IRS	252

6. When applicant failed to secure a service of his preference, he was to be allocated a residuary service in which there was vacancy. The applicant had not indicated his preference for any other service. He cannot compare his candidature with other candidates who had given preferences for other services and therefore, it has been pointed that the claim of the applicant had to be rejected.

7. Learned counsel for the applicant vehemently contended that as per the advertisement that had appeared, the applicant had to be allocated the service in accordance with the position secured by him. The persons who did not score as well as the applicant, had found a place in certain other services while the case of the applicant had been rejected. Thus he pleaded discrimination and also that the claim of the applicant could not have been rejected.

8. In order to appreciate the said controversy, we take advantage in referring to rule 2 of the examination rules which read -

"2. A candidate shall be required to indicate in his/her application form for the Main Examination

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his/her order of preferences for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by Union Public Service Commission.

NOTE - A candidate is advised to be very careful while indicating preferences for various services/posts. In this connection, attention is also invited to Rule 18 of the Rules. The candidate is also advised to indicate all the services/posts in the order of preference in his/her application form. In case he/she does not give any preference for any services/posts, it will be assumed that he/she has no specific preference for those services. If he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preferences."

9. Rule 16 also is important and runs as under:

"16 (i) After interview, the candidates will be arranged by the Commission in the order of merit as disclosed by the aggregate marks finally awarded to each candidate in the Main Examination (written examination as well as interview) and in that order so many candidates as are found by the Commission shall be qualified at the examination shall be recommended for appointment upto the number of unreserved vacancies decided to be filled on the result of the examination.

(ii) The candidates belonging to any of the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes may to the extent of the number of vacancies reserved for the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes be recommended by the Commission by a relaxed standard, subject to the fitness of these candidates for the selection to the services.

Provided that the candidates belonging to the Scheduled Castes, Scheduled Tribes and the Other Backward Classes who have been recommended by the Commission without resorting to any relaxations/concessions in the eligibility or selection criteria, at any stage of the examination, shall not be adjusted against the vacancies reserved for Scheduled Castes, Scheduled Tribes and the Other Backward Classes."

Rule 18 -

"Due consideration will be given at the time of making allocation on the results of the examination to the preferences expressed by a candidate for



various services at the time of his application.  
The appointment to various services will also be  
governed by the Rules/Regulations in force as  
applicable to the respective Services at the time  
of appointment.

Provided that a candidate who has accepted the allocation to a service on the basis of this examination to be allocated only to those service(s)/post(s) which were higher in the order of preference in his/her application form for the examination on the basis of which he/she had been last allocated to a service."

10. Reliance in this regard was being placed on proviso to Rule 16 of the above said rules to contend that candidates belonging to the Schedules Castes, Scheduled Tribes and OBC who had been recommended by the Commission without resorting to any relaxation in the eligibility criteria at any stage of the examination, shall not be adjusted against the vacancies reserved for SCs, STs and OBCs.

11. Indeed the said proviso cannot be read in isolation. The rules have to be read harmoniously to give effect to the reservation policy. The allocation has to be made in the cadre in accordance with the preference required and indicated. As per the said rule, a candidate is required to indicate his preferences for various services/posts in which he or she would like to be considered in case recommendation is made by the U.P.S.C. The candidate has to be careful while indicating the preference. So far as the OBC candidates or the reserved category candidates are concerned, they have to be adjusted in accordance with the number of vacancies reserved and Rule 18 makes it clear that due consideration has to be given at the time of allocation on the results of the examination to the preferences expressed by a candidate at

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the time of his application. In other words, if the candidate only expresses willingness to be considered for I.A.S. and the number of candidates of that particular reserved category who have scored better than that candidate already filled up the required quota, the said candidate would lose his candidature because he has not given the option or preference for any other services.

12. Identical is the position herein. The applicant only gave option for seven services indicated above. In other words, he excluded himself by his own option for any service except seven services for which preference was given by him. Having done so, he took a calculated risk. It is made clear in the reply which is not in dispute that all the persons belonging to the Backward Class category who gave other preferences, were adjusted in the seven services indicated by the applicant. They had scored more than the applicant during the examination. When it is so, the applicant indeed cannot make a grievance in this regard about it.

13. Our attention has been drawn towards the decision of the Supreme Court in the case of Shri Ritesh R. Sah vs. Dr. Y. L. Yamul & ors., JT 1996 (2) S.C.495. The Supreme Court in this regard held:

"A candidate who is seeking reservation at the stage of admission to post-graduate medical course may not have availed of the benefit of reservation at the stage of admission to M.B.B.S. course as he would have been admitted on his own merit in the general quota (open competition quota) but because the competition at the level of post-graduate medical course is extremely acute, he may have to seek the benefit of reservation. Therefore, the assumption that a student seeking benefit of

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reservation at the stage of admission to post graduate medical course has already enjoyed the benefit of reservation once previously is not necessarily true. Secondly, there is no rule under Article 15 (4) that a student cannot be given the benefit of reservation at more than one stage during the course of his education career. Where to draw the line is not a matter of law but a matter of policy for the State to be evolved keeping in view the larger interests of the society and various other relevant factors. Unless the line drawn by the State is found to be unsustainable under the relevant article, the court cannot interfere. With regard to the observations in Indra Sawhney case in para 834 and 839 relied upon to contend that the reservation for admission at the post-graduate level is unconstitutional, it was clarified in para 8 that "the Court not speaking of admission to specialities and super-specialities. Moreover, MS or MD are not super-specialities. In any event, this Court did not say that they were not permissible." The argument that reservation at post-graduate level is detrimental to the interests of the society was not countenanced holding that "no one will be passed unless he acquires the requisite level of proficiency."

14. The applicant indeed, in the peculiar facts, cannot take advantage of what has been held by the Supreme Court. The Supreme Court, by no stretch of imagination, had concluded that a person who has exercised his preference for different services and finding no place therein, can slide down and ask for another service subsequently.

15. In fact, two decisions of this Tribunal throw considerable light on the subject. In the case of Anil Kumar vs. Union of India & anr. (O.A.No.2624/96) decided on 5.5.99, this Tribunal held:

"We find that no other candidates, similarly placed like that of the applicant, has been allocated to a service ignoring the applicant herein. The candidate even higher in merit than the applicant had gone without allocation to a service since no vacancy was available in turn. It is also seen that the candidate who obtained 650th position could be allocated to a service since he had indicated preference for that service and a vacancy

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was available in that service in his turn in terms of merit, after considering the claim of the applicant for allocation to a service for which he had expressed his preference. On the contrary, applicant herein did not express any preference for allocation to AFHQ like Shri A.V.B. Shankar (Rank 650). Therefore, the applicant was not allocated to that service in his turn before Shri Shankar. In other words, applicant has faulted basically on account of his failure to indicate in the application form for main examination the order of preference for services/posts for which he would have liked to be considered for appointment in case he is recommended for appointment by UPSC. We also find that the applicant was advised to indicate the preference of service. He, however, failed to comply with the instructions. As per the provision now prevalent, service allocation is made on the basis of preferences expressed by the candidates vis-a-vis the rank of the candidates concerned as against others. In the instant case, applicant did not indicate preference for allocation to all the services and when he could not be allocated to the services/posts for which he has indicated his preferences, he was considered for allocation to one of the remaining services in his turn in the order of merit amongst candidates similarly placed. As no vacancy in any service/post was available in his turn, the applicant could not be allocated to any service/post."

16. Similarly in the case of Satya Prakash vs. Union of India & anr. (O.A.No.294/98) decided on 3.5.99, almost a similar question had come up for consideration and therein, this Tribunal while rejecting a similar argument, held:

"9. Having regard to the facts of the case, the ratio of the judgement of the Supreme Court in Ritesh Shah's case (supra) and the provisions of the examination Rules, referred to above, which have to be read together, and not in isolation as claimed by the learned counsel for the applicant, we find no good grounds to interfere in the case. The proviso to Rule 16 (ii) cannot be read in isolation, without giving due regard to the provisions for allotment to the service based on the result of the CSE and the preference given by the candidate in his application form. Apparently, the applicant had failed to give as many preferences of service as he could have done under the Rules. No doubt as provided in the Note below Rule 2, even if he had not given any preference for some of the services which he had omitted, it would mean that he did not have any specific preference for those services and could still have been allotted to any of the remaining services/posts

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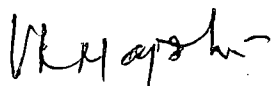
provided there are vacancies after exhausting the list of OBC candidates who can be accommodated to those services in accordance with their preferences. The respondents have categorically submitted that there are no vacancies remaining in those services for which the applicant had not opted after accommodating the other OBC candidates against their quota of 174 vacancies in accordance with the preferences given by the other candidates. From the documents placed on record, we have no reason to doubt this position."

We find ourselves in respectful agreement with the said view point.

17. Reverting back to the facts as also mentioned above that no person who had scored less marks than the applicant in the category of OBC has got any of the posts for which the applicant had given the option. Applicant is missing the bus because of his having given the option for only seven services. He indeed, in that view of the matter, has no grievance. Rule 2 read with rule 18 of the Civil Services Examination Rules provides the answer. Due care and caution has to be exercised while allocating the posts on the basis of the results. Preferences of the candidates cannot be ignored. Their names have to be arranged in the order of merit and also the preferences that have been given. Once the posts vis-a-vis which preference had not been given, had been allocated to persons who have scored more marks, the applicant can make a legal grievance on that count.

18. Resultantly the present application being without merit must fail and is dismissed.

Announced.



( V.K. Majotra )  
Member (A)



( V.S. Aggarwal )  
Chairman