

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 187/2001

New Delhi this the 9th day of March, 2001

Hon'ble Mr. V.K. Majotra, Member (A)
Hon'ble Mr. Shanker Raju, Member (J)

Shri Mohit Yadav, S/o Shri Mahendra Yadav,
R/o 62, Jwalaheri, Paschim Vihar,
New Delhi-110 063.

...Applicant

(By advocate: Shri Ranjit Rao)

Versus

1. Union of India,
Through the Secretary, Ministry of Personnel,
Public Grievances and Pensions
(Department of Personnel and Training)
North Block, New Delhi-110001.

2. Union Public Service Commission,
Through its Secretary, Dholpur House,
Shahjahan Road, New Delhi-110001.

...Respondents

(By advocate: Shri P.H. Ramchandani)

O R D E R

Mr. V.K. Majotra, Member(A).

The applicant who belongs to an OBC secured 352nd rank out of a total of the merit list of 411 successful candidates in the Civil Services Examination, 1999 (CSE, 1999 for short). He has assailed respondents' action in not allocating Indian Police Service or any other service to him alleging that persons having lower rank than the applicant have been allocated various services. He claims that as per DOPT OM dated 8.9.93, 27% reservation should be provided to OBC in all services. According to him, whereas UPSC had recommended 7 candidates belonging to OBC against a total of 36 posts of IPS, on the basis of 27% reservation for OBC 10 posts in the IPS should have been recommended for OBC. Similarly from 77 posts for Group B services, only 13 were recommended in stead of 21 required on the basis of 27%

7

reservation for OBC. The applicant has pointed out that one Shri Umesh Balonda, an OBC who had obtained 349th rank in the merit was allotted Custom Appraisers Service, Group B and another OBC Avinash S Tarhawadkar securing 350th rank was allotted a Group A service and other candidates securing ranks below 352nd rank have also been allotted various services. The applicant has sought direction to the respondents to allot IPS to the applicant, or in the alternative any other service in accordance with his rank with all consequential benefits.

2. In their counter, the respondents have stated that for category-wise distribution of vacancies among General, OBC, SC and ST, the Government of India has prescribed 200 point roster for being followed by respective controlling authorities. Distribution of vacancies in the prescribed percentage as per 200 point roster is ensured over a period of time if not in a particular year. As per Annexure R-I, out of 411 vacancies notified on the basis of CSE 1999, 234 were earmarked for General candidates, 97 for OBC, 53 for SC and 27 for ST candidates. According to the respondents, the successful candidates are considered for allocation of services as per their merit and their preferences for various services in terms of Rules 2 & 18 of the Examination Rules. Vide Notification dated 12.12.96, it was clarified that the candidate must go through the Notification carefully as compliance with its instructions is binding. As per rules, candidate is



required to give his preference for various services/posts. 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 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. The order of service preferences indicated by the applicant and the last OBC candidate allocated to these services/posts are given in the table in Annexure R-II. After considering all OBC candidates who could be allocated to a service/post according to their rank and preference, no vacancy for OBC category in any of the remaining service/post was left at the turn of the applicant. Hence he could not be allocated to a service due to non-availability of any vacancy at his turn under the OBC category.

3. We have heard the learned counsel of both sides and perused the material on record and that relating to category-wise distribution of vacancies in I.P.S. through C.S.E., 1998, produced by Respondents.

4. According to the learned counsel of the applicant, whereas from 1994, when reservation for Backward Classes commenced, upto 1998, every year, the OBCs were provided 26% to 28% reservation in posts/vacancies in the Indian Police Service, during During 1999 against a total of 36 posts in the IPS,

the OBCs were accommodated against 7 posts only, providing only 19.4% reservation for OBCs. The learned counsel contended that 3 more candidates should have been accommodated as per 27% reservation for OBCs in the IPS. Referring to Model Roster of reservation with reference to posts for direct recruitment on All India Basis by Open Competition, out of a total of 450 I.P.S. posts filled from 1994 till 1999 whereas 121 OBCs should have been recruited on the basis of 27% reservation, only - 119 had been accommodated thereby causing a short fall of 2 posts. Even in 1998 on the basis of 27% reservation for OBCs, 10 posts out of a total of 36 were allocated to the OBC in the IPS. However, in 1999 only 7 OBCs were taken against a total of 36 IPS posts. The learned counsel maintained that if 2 or 3 more posts on the basis of 27% reservation for OBC or on following 200 point reservation roster were provided for OBC, the applicant would have been offered IPS or any other service as candidates upto 350th rank had already been allotted Group-A/Group-B services.

5. The learned counsel of the respondents pleaded that whereas UPSC recommends candidates for allocation, the Department of Personnel & Training (DOPT) makes the actual allotment of the candidates as per their merit preferences, etc. The number of posts in various services are determined and conveyed by respective Ministries/Departments to the UPSC and not by DOPT. According to the learned counsel, assuming that there was a short fall of 2/3 posts in the OBC category, 54 OBCs who had attained higher merit than

the applicant and who could have been allotted IPS on the basis of their preferences could not be allotted to IPS. The last man who was allocated IPS had 232nd rank vis-a-vis applicant's 352nd rank. The learned counsel also stated that reservation on the basis of prescribed percentage is not done on the annual basis. Reservation cannot exceed 50% in any year. In 1998, it was decided to change the reservation roster to a post based reservation. 1999 was the second year of adoption of post based roster. While changing over to a post based roster, it was found that there was an excess of 3 OBC between 1994 and 1998. Such an excess under the rules could be adjusted in future and as such it was adjusted against 1999 vacancies. He also contended that in case a candidate has not made any preference for some services/posts, but another candidate who may be junior in rank than such a candidate and has given his preference for a service/post can certainly be accorded a service/post as per his preference and a candidate who has not given his preference for such a post/service would be left unallotted to a service/post.

6. The following rules of the CSE Rules, 1999 are relevant for adjudication in the present case. Rule-2 of the CSE Rules, 1999 envisages that-

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

11

A candidate who wishes to be considered for IAS/IPS shall be required to indicate in his/her application if he/she would like to be considered for allotment to the State to which he/she belongs in case he/she is appointed to the IAS/IPS.

NOTE:- The 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 preferences, he/she shall be allotted to any 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".

Rule-18 of the Civil Services Examination, 1999 Rules envisages that-

"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 an earlier examination shall be eligible 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/she had been last allocated to a service."

7. From the record produced by the respondents before us, it is found that the respondents had decided to fill up 36 vacancies in IPS through CSE 1999. Vacancies in IPS are filled up on

h

12

the lines as it is done for IAS by distribution among UR, OBC, SC and ST on the basis of model 200 points roster, devised on the directions of the Hon'ble Supreme Court in R.K. Sabharwal's case and circulated to all the Ministries/Departments vide Department of Personnel O.M. dated 2.7.97. In the IPS model roster was introduced from CSE, 1998. The model roster has been prepared keeping in view two fundamental principles i.e. the reservation for the entitled categories be kept within the prescribed percentage of reservation and the total reservation should not exceed 50% of the cadre in any case. Roster points from 1 to 36 of the model roster had already been consumed at the time of filling up vacancies in IPS through CSE, 1998. Recruitment to IPS during last 5 years i.e. from CSE, 1994 indicated that 388 candidates were actually appointed out of which 197, 105, 57 and 29 belong to General, OBC, SC and ST categories. Category-wise roster points from 37 to 72 are:-

General	-	18
OBC	-	10
SC	-	05
ST	-	03

As recruitment through CSE, 1994 was made against 68 vacancies and recruitment to IPS through CSE, 1999 was made against only 36 vacancies, 52 points from roster have been reduced. As such the model roster has been reduced from 388 to 336. Upto roster point 336, category-wise candidates should be in position and the candidates actually in position are as under:-

h

13

Actually in Position	Requirement as per roster points.
General - 168	171
OBC - 93	90
SC - 49	50
ST - 26	25

From the above, it is clear that whereas 3 General candidates are fewer and 3 OBC candidates in excess, 1 SC candidate is less and 1 ST candidate in excess. This has happened because 9 roster point meant for one category or the other are occupied by another category candidate. It was decided that shortage of UR candidates would be made good by appointing 3 UR candidates against 3 roster points meant for OBC candidates i.e. points numbers 63, 67 and 71 of the roster. Shortage of 1 SC candidate was not made good as increasing vacancy for SC would increase their percentage beyond the prescribed limit of 15%. 1 vacancy of ST was reduced by keeping the roster point, 69 vacant and roster point 73 was utilised by appointing UR candidate. Thus, the number of category-wise vacancies filled in IPS through CSE, 1999 has been as under:-

General	- 22
OBC	- 7
SC	- 5
ST	- 2

Total	36

8. From the above facts as available in the records, we find that the allegation of non-adherence to 27% reservation for OBC is not correct. The respondents have followed the prescribed 200 point

16

14

roster, the provisions of Rule 2 & 16 and adjustment of shortage of 3 un-reserved candidates against excess of 3 OBC candidates which need not have been scattered over more than one year. We also find that whereas the last candidates of the OBC category who indicated preferences for IPS and Indian Ordnance Factory Service Group-A were 232 and 350 respectively, there were several OBC candidates who ranked higher than the applicant and could not be accommodated in the IPS. From the records, it is also established that barring in 1998, the number of candidates actually appointed in IPS each year between 1994 and 1997 was fewer than the number of vacancies notified/candidates allocated. The Hon'ble Supreme Court in Shankarshan Das's case (1991 SCC (L&S) 800), has held that candidate recommended by the UPSC has 'no indefeasible right' for appointment to a service. "The notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection, they do not acquire any right to the post. Unless the relevant rules so indicate the State is under no legal duty to fill up all or any of the vacancies." In the present case, whereas all the 36 vacancies in IPS notified for CSE, 1999 were filled, 3 of them reserved for OBC were distributed to the UR category as during the previous years, there had been a shortage of 3 vacancies in the UR category and a similar excess in the OBC category.

9. Having regard to the facts and circumstances of the case as discussed above we do not

h

:: 10 ::

15

find any infirmity in the action of the respondents in not allocating IPS or any other service to the applicant on the basis of CSE, 1999. The OA is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

V.K. Majotra
(V.K. Majotra)
Member (A)

cc.