

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 2008/88
~~P.A No.~~

32

Date of Decision 6-8-2001

Shri Bhana Mehrotra

..Petitioner

Shri Pradeep Nigam

..Advocate for the Petitioner(s)

Versus

Union of India

..Respondent

Shri V.S. R. Krishna

..Advocate for the Respondents

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not? Yes ✓
2. Whether it needs to be circulated to other Benches of the Tribunal? No ✓

(GOVINDAN S. TAMPI)

MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2009/1998

New Delhi, this the 6th day of September, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

Bhanu Mehrotra
S/o Shri P.N.Mehrotra
R/o A-1/3 Balda Colony, Nishatganj
Lucknow.

...Applicant

(By Advocate Shri Pradeep Misra)

V E R S U S

UNION OF INDIA : THROUGH

The Secretry
Ministry of Personnel, P.G. and Pension
Govt. of India
North Block, New Delhi - 1.

...Respondent

(By Advocate Shri V.S.R.Krishna)

O R D E R

By Hon'ble Shri Govindan S. Tampi,

OA No. 2009/98 has been filed by Shri Bhanu Mehrotra, challenging the final service allocation list of the candidates who had qualified in the Civil Service Examination - 1995 (CSE-1995). This OA which was originally disposed of on 8-11-2000 for default and non-prosecution, was revived after hearing the request made by the Counsel for the applicant by MAs 449 and 450/2000.

2. Heard Shri Pradeep Misra, learned counsel for the applicant and Shri V.S.R.Krishna, learned counsel for the respondents.

3. Stated in brief, the facts are that the applicant qualified himself in CSE 1995, results of which were declared on 19-6-1996 and was placed at Sl.No. 205 of the final list of successful

candidates. By order No.13011/41/96/AIS (1) dated 19-8-1996 he stood allocated to Indian Ordnance Factory Service (IOFS) on the basis of his position in the merit list, eligibility and preference. The said order also mentioned that he may be allocated to Indian Railways Accounts Service (IRAS), a service for which he had given higher preference, depending on the allocation of service to candidates above him in the merit list. The applicant had indicated his preference for as many as ten services including IRAS, in preference to IOFS. In view of his comparatively higher position in the merit list he felt he was eligible to be allocated a service higher in preference to IOFS. In terms of the proviso to Rule 4 of the Civil Service Examination Rules, 1995 (the Rules), someone who has been allocated to IPS or Central Services Group 'A' on the basis of CSE-1994 could apply for CSE-1995 only after obtaining Govt's permission, and in the case of his selection he can take either of the services. Rule 18 provided that for allocating services, preferences will be considered, but subject to the regulations on the issue. Those who have been approved for certain services are eligible to compete again but for certain other services. In the CSE-1995, 645 candidates including the applicant were declared successful. While he was undergoing foundation course at Railway Staff College, Vadodara he was told about his allocation to IOFS. On perusal he found that the list contained the names of a few who had been allocated services on the basis of CSE-1994. As they had been allocated certain services in CSE 1994, which they had accepted, they should not have been allocated any

34

h

service on CSE-1995. The applicant was allocated to IOFS in 1996. Three candidates who had qualified in 1994 also and had exercised their option to join the Foundational Course on the basis of the earlier examination. Therefore, their service allocations in CSE-95 were to be treated as not existing and the post wrongly allocated to them should have been made available for others, this would have gone to ^{those} like the applicants. While earlier notifying the number of vacancies in various services, the respondents were aware of the position as well as the number of candidates to be allocated but still they chose to make allocations arbitrarily. In fact if those of the earlier year were correctly allocated against the previous year at the appropriate places, the applicant would have been allocated the service for which he expressed his higher preference. Still they have been wrongly allocated to those who are not entitled for allocation in the same year. This has denied his chance of getting the service of his choice. The applicant was sure of a higher service allocation, but he has expected to join the Foundational Course as a part of the IOFS, thereby almost compelling him to join the service of lower preference. Thus the applicant has been unduly denied the choice of a better service. Hence this OA, by which he seeks rectification of the mistake, correct recalculation of the vacancies and his adjustment against one of those ^{fresh} vacancies.

4. In their reply the respondents contest the pleadings made by the applicant. They point out that UPSC conducts Civil Service Examination from year to year in accordance with the relevant examination rules

and those candidates recommended by the UPSC are considered for allocation to various services in terms of Rule 18 of the Civil Services Rules, which provides that due consideration will be given to the preferences expressed by the candidate subject to the provision that those who are qualified services like Indian Police Services and Central Services Group 'A' will be permitted only for other services to which they had not given their preferences in the next year. Mere inclusion of the name of the individual in the list does not confer any right on the candidates to be given any specific appointment or allocation to any particular service for which he had given higher preferences as had been laid down in the cases of Shankarsan Das Vs. Union of India (AIR 1991 SC 1612) as well as the Gujrat Deputy Engineers Association & Ors. (1994 28 ATC 78). After finalisation of the allocation of candidates, those vacancies which arise on account of any particular candidate not joining, ~~is~~ ^{are} not filled up on the basis of the ^{result} ~~rules~~ of the same examination, but are carried forward to the next examination. The waiting list, if any, prepared does not become a source of recruitment, but will be operative only in the contingency of extreme exigency. As against 645 vacancies indicated to be filled up on the basis of CSE-95, equal number of candidates were considered and were so allocated. The applicant was allocated to in the IOFS and the same was correctly done and strictly in accordance with the CSE Rules. Two more examinations had taken place since then and candidates who qualified in them have also been allocated accordingly. The applicant's plea is that three candidates who also passed in CSE-95, had

declined the services allocated to them but had preferred to join the services allocated to them on the basis of CSE-94. Therefore, three vacancies had become available for allocation in 1985, which would have enabled him to get the allocation in IRAS or ICCES, for which he had placed higher preference. Acceptance of this would have set in a chain of reaction. Besides, the rules do not provide for upgradation of services against drop out vacancies. The vacancies arising on account of vacancies not being filled up as the candidates declined to accept the same cannot be per se be filled up by those with lower ranks but are meant to be carried forward. Respondents point out that action to the contrary proposed by the applicant was neither correct nor applicable. The reference in the letter dated 19-8-1996 allocating him to IOFS, that "You may be allocated to IRAS, a service for which you have expressed higher preference in the application for preference duly made" is in the nature of a routine statement and did not at all constitute any assurance that this allocation would be granted. It is averred that none who was below the applicant in the UPSC merit list has been allocated IRAS and, therefore, he does not have any claim for allocation of services. All the three persons referred to in the application - Vinay Kumar Choubey, Julia Mahapatra and Ravindra Singh Yadav - were correctly allocated the services different from what they had been given in 1994 strictly in accordance with the rules, but they chose to continue with the services originally allotted to them on the basis CSE-1994. Obviously new vacancies arising in 1995 were not to be automatically meant for

37

the upgradation of the candidates with lower position in the list, as has been claimed. The applicant who belonged to the general category was correctly given the service strictly in accordance to his rank, his medical status, his preference to various services and availability of services ⁱⁿ his turn in particular service. Respondents affirm that no person below the applicant in UPSC's merit list ^{of 1995} was allocated any of the services preferred by him i.e. ICCES or IRAS at his cost and prejudice. The applicant has not been able to produce any evidence in support of his plea that he has been unfairly discriminated. Therefore, his request cannot be entertained. The applicant has also not showed as to how any of the Rules had been violated by the respondents. The applicant could not have been given any service other than IOFS, keeping in mind his position at 205 in the merit list. Since on the basis of CSE-95, all successful candidates have been allocated against all the vacancies duly notified by the UPSC, in accordance with the accepted policy of the Govt., no vacancy in any service remained unallocated. The applicant did not have any vested right to claim allocation against non-existing vacancies. While it was true that two or three individuals who were allocated services like IPS, IRAS or ICCES, on the basis of the CSE-1995, declined to accept the same and opted to retain service allocated to them on the basis of CSE-1994. The same did not make any change in the situation as the service allocation of CSE-95, has achieved its finality. There was no scope for re-opening the same, according to the respondents.

38

h

5. During the hearing Shri Pradeep Misra, learned counsel appearing for the applicant reiterates the pleas and points out that as the vacancies have been created by three persons who have qualified both in CSE-94 and CSE-95, by not accepting the 1995 allocation, those three vacancies should have also been added to 1995 list, against one of which the applicant should have been considered for allocation of another service preferred by him. He also states that his case was covered by the decisions of the Supreme Court in the case of A.P. Agarwal Vs. Govt. of NCT of Delhi and Anr. (2000 (1) SCC 600). On the other hand, Shri V.S.R. Krishna, learned counsel for the respondents argues that the applicant's has no case in the circumstances of the case and the decision of the Hon'ble Apex Court ^{in Sankarshan Sakh.} to the effect that placement in a selection panel does not give rise to any indefeasible right for appointment.

6. We have carefully deliberated on the rival contentions. The point for determination in this OA is the eligibility of the applicant for allocation of a service for which he had indicated his choice/preference above IOFS which has been allocated to him. On the basis of CSE-1995, he has been allocated IOFS by respondents letter dated 19-8-1996, with an indication that he may be allocated to IRAS for which he had given higher preference. However, it did not happen. According to the applicant, this arose on account of the inaction of the respondents for not including ^{for 1995 allocation} the three drop out vacancies which arose on account of three individuals - Vinay Kumar Chaubey, Julia Mohapatra and Ravinder Singh Yadav -

declining to accept the services allocated to them on the basis of CSE-1995 but retaining the services allocated to them on the basis of CSE-1994. It is in this context that the applicant seeks to rely upon the decision of the Hon'ble Supreme Court in the case of A.P. Agarwal Vs. Govt. of NCT of Delhi and Anr. (supra). According to the applicant, the respondents failure to do so has cost him. It was, therefore, illegal. Legal position as settled by the Hon'ble Supreme Court in the case of Shankarsan Dass (supra), on the other hand, is that placement of any individual in the merit list per se would not confer on him any indefeasible right for appointment to any post much less any specified service. Relevant portion of the judgements (para 7 & 10) are as below :-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily 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 recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the state has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana Vs. Subhash Chander Marwaha (1974) 1 SCR 165 : (AIR 1973 SC 2216), Miss Neelima Shangla Vs. State of Haryana, (1986) 4 SCC 268 : (AIR 1987 SC 169) or Jitendra Kumar Vs. State of Punjab, (1985) 1 SCR 899 : (AIR 1984 SC 1850)."

"10'. The main contention on behalf of the appellant has been, however, that the authorities in keeping the vacancies arising

later unfilled acted arbitrarily. Mr. Goswami referred to several documents annexed to the special leave petition and affidavits filed on behalf of the parties and contended that although appointments of many candidates in the other service were made in the later vacancies, the vacancy in the Indian Police Service which subsequently became available to the appellant was refused without any just cause, resulting in illegal discrimination. This was emphatically denied on behalf of the respondent. Since the matter did not appear to be free from ambiguity on the basis of the affidavits before us, we decided to examine the factual aspects more thoroughly by examining the other available materials on the records of the Union of India, and accordingly the learned counsel for the respondent got the relevant departmental files called. Two further affidavits were also filed along with photostat copies of a large number of documents, which we examined at some length with the aid of the learned advocates for both sides. From the materials produced before us it is fully established that there has not been any arbitrariness whatsoever on the part of the respondent in filling up the vacancies in question or the other vacancies referred to by the learned counsel for the appellant. The process of final selection had to be closed at some stage as was actually done. A decision in this regard was accordingly taken and the process for further allotment to any vacancy arising later was closed. Mr. Goswami relied upon certain appointments actually made subsequent to this stage and urged that by those dates the further vacancies in the Indian Police Service had arisen to which the appellant and the other successful candidates should have been adjusted. We do not find any merit in this contention. It is not material if in pursuance of a decision already taken before closing the process of final selection, the formal appointments were concluded later. What is relevant is to see as to when the process of final selection was closed. Mere completing the formalities cannot be of any help to the appellant. We do not consider it necessary to mention all the details in this connection available from the large number of documents which closely examined during the hearing at considerable length and do not have any hesitation in rejecting the argument of the learned counsel in this regard based on the factual facts." (emphasis added)

7. It is also indicated that it is for the Government to decide as to whether all the vacancies of any year has to be filled up or not or should be transferred to a subsequent year or not. What is being asked in this OA is that three more vacancies

should have been found by the respondents by adjusting drop out vacancies to accommodate the applicant and give him the allocation of service for which his preference was higher. This proposition has no sanction in law. The applicant would have had a case, if and only if anyone below him in the merit list of CSE-1995 was adjusted in any vacancy in any of the services for which he had indicated higher preference i.e. IRAS, ICCES etc. Unless and until the same is done the applicant cannot have a case. In fact the last general category candidate to be allocated IRAS is placed at 198 of CSE 1995 merit list i.e. 7 places above the applicant. What he is seeking through this OA is that respondents should increase the vacancies and adjust him against one of those vacancies. This demand cannot be endorsed in law. This applicant's claim has, therefore, has to fail.

8. On perusal of the judgement of the Hon'ble Supreme Court in the case of A.P. Aggarwal Vs. Govt. of NCTD and Anr. (supra) relied upon by the applicant, we are convinced that the said case is clearly distinguishable on facts from the case under consideration. We further note that recently in a similar matter on allocation of services, agitated in OA 641/2001 filed by Pankaj Garg Vs. Union of India & Ors., another Court of the Principal Bench of the Tribunal has also repelled the plea of the application for change of service, retrospectively, relying upon the decision of the Hon'ble Apex Court in Shankarsan Dash's case. We also follow the same.

9. In the result, we find that the applicant has not made out any case for our interference. The

43

- 11 -

application, therefore, fails and is accordingly dismissed.

No costs.

(Govindan S. Tampi)
Member (A)

/vikas/

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)