

Central Administrative Tribunal
Principal Bench

O.A. No. 68 of 1998

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New Delhi, dated this the 27 March, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALI, MEMBER (J)

Shri Ravi Horo,
S/o Shri Salam Horo,
C/o Mr. Utpal Minz,
R/o 880, Mukherjee Nagar,
Delhi-110009. Applicant

(By Advocate: Shri J.C. Bhattacharya along with
Shri B.K. Dass)

Versus

1. Dept. of Personnel & Training,
Ministry of Personnel, Public Grievances
and Pensions,
North Block, New Delhi-110001 through
its Secretary.
2. Ministry of Forest and Environment,
Parivarjan Bhawan,
CGO Complex,
Lodhi Road,
New Delhi-110003 through its Secretary
3. State of Bihar,
Govt. of Bihar,
Old Secretariat, Bailey Road,
Patna, Bihar through its Chief Secretary.
4. Director,
Indira Gandhi National Academy
of Forest,
P.O. New Forest,
Dehradun,
Uttaranchal.
5. Chief Secretary,
Andaman & Nicobar Islands Admin.,
Port Blair.
6. Shri Prashant Alok,
Indian Forest Service (P),
C/o Shri Mukh Dev Sharma,
P.O. New Forest,
Dehradun. Respondents

(By Advocate: Shri V.S.R. Krishna
for DOPT
Shri M.M. Sudan for pvt. respondent
Shri R.N. Singh proxy counsel
for Shri R.V. Sinha for UPSC)

ORDERS.R. ADIGE, VC (A)

In this O.A. filed on 5.1.98 applicant impugns respondents order dated 27/31.3.97 (Annexure A-1) allocating him to Joint AGMUT cadre of Indian Forest Service (IFS). He also prays for quashing and setting aside the allocation of Respondent No. 6 (R-6) Shri Prashant Alok to Bihar State and to allocate applicant to Bihar State as per merit and rank amongst IFS insiders of Bihar.

2. Applicant admittedly belongs to ST community. He as well as R-6 Prashant Alok appeared in the IFS Examination, 1995. In the results declared on 18.4.95 (Annexure R-1 to official respondents' reply), while R-6 Shri Prashant Alok secured 49th position, applicant secured the last i.e. 75th position.

3. Admittedly there was only one insider vacancy reserved for SC/ST in Bihar State in that year. It is not denied that both applicant as well as R-6 are insiders.

4. As per R-6 Shri Prashant Alok's own averments in his reply pursuant to the advertisement issued by UPSC for IFS Examination, 1995, he applied under OBC category and had also enclosed a copy of the OBC certificate dated 29.6.95 (Annexure R6-1), as belonging to Lohar community on the basis of which he



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appeared in the written part of that examination in July/August, 1995. In January, 1996 he was informed that on the basis of the written examination, he stood qualified for personality test to be held in February/March, 1996. Meanwhile the Bihar Government by notification on 14.11.95 had declared "Lohar" Community as belonging to Scheduled Tribe, on the basis of a Patna High Court decision. By letter dated 9.1.96 (Annexure R6-3) applicant informed UPSC about his inability to submit further OBC certificate since he was no longer treated as OBC in view of notification dated 14.11.95. He informed UPSC by subsequent letter dated 14.1.96 (Annexure R6-4) that he had applied for ST certificate as per notification dated 14.11.95. UPSC by letter dated 22.1.96 called upon him to produce the certificate by 29.1.96, upon which by letter dated 4.2.96 (Annexure R6-6) he requested UPSC to permit him to appear in the interview and he would be able to produce the ST certificate at the time of interview. Thereupon he received letter dated 13.2.96 (Annexure R6-7) calling upon him to appear for interview on 6.3.96. He appeared in the interview and also qualified the examination and as per the result declared through a Press Note by the UPSC, on 8.4.96. He secured 49th position and was shown as belonging to ST community. He was finally appointed to the Indian Forest Service vide notification dated 18.7.96 (Annexure R6-8), and was allocated to Bihar State vide notification dated 20.2.97 (Annexure R6-9), against the insider vacancy reserved for ST/SC.

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5. However, the Hon'ble Supreme Court in its judgment dated 2.2.96 in Nitya Nand Sharma & Anr. Vs. State of Bihar & Others AIR 1996 SC 2306 had conclusively held that Lohars belonged to OBC community and were not STs and the Court could not give any declaration that Lohars were equivalent to Loharas or Lohras or that they were entitled to the same status.

6. Respondent No. 1 to 5 in their reply to justify their action in allocating R-6 Prashant Alok to Bihar against the single insider vacancy reserved for SC/ST, on the ground that they went by the UPSC's results as communicated through the Press Note dated 8.4.96 in which he was shown as being an ST candidate, followed by UPSC's statement enclosed with letter dated 16.10.97 (Annexure R-2) in which R-6 was shown as being ^{an}₁ ST candidate. It is further stated that assuming without admitting that R-6 Prashant Alok does not belong to SC/ST category, the next SC/ST candidate from Bihar in order of merit from the 1995 batch of IFS probationers was Shri Dinkar Kumar, SI. No. 63 who ² has been allocated to Tamil Nadu cadre, and hence the next SC/ST candidate who was entitled to get allocated to Bihar cadre as an insider candidate would be Shri Dinkar Kumar and not applicant.

7. In this connection it is not denied that as per guidelines, SC and ST are grouped together for the purposes of cadre allocation.

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8. We have heard both sides.

9. It is clear that after the Hon'ble Supreme Court's judgment dated 2.2.96 in Nityanand Sharma's case (supra) R-6 Prashant Alok could not have been allocated to Bihar^{1 state} against the single insider vacancy reserved for SC/ST, he belonging to OBC category.

10. The question then remains as to what should be done at this stage. In this connection we note that subsequent to the O.A. being filed, Bihar State has itself been bifurcated into Bihar State and Jharkhand State. During hearing we were informed that R-6 Prashant Alok has been allocated to Jharkhand State, and on behalf of applicant also it was pleaded that he be allocated to Jharkhand State as he belonged to that area. As regards Shri Dinkar Kumar Sl. No. 63, although during hearing, applicant's counsel stated that as per applicant's information, Shri Dinkar Kumar was not anxious for any change of cadre, we have no material to verify the correctness or otherwise of this assertion. However, it must be recorded that nothing has been shown to us to establish that he has at any stage agitated for change of cadre, and in any case he is not before us in the present O.A. Furthermore even if he was desirous of a change of cadre, it is not known whether he would like to be allocated to Bihar State or Jharkhand State.

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11. Under the circumstances, confining ourselves to the prayer of applicant Shri Heru who is the only one before us, and having regard to the fact that consequent to the ^{creation} ~~constitution~~ of Jharkhand State, a cadre of Indian Forest Service officers will be required for that State, we dispose of this O.A. with a direction to respondents to consider applicant's prayer for allocation to Jharkhand State in accordance with rules, instructions and judicial pronouncements by a detailed, speaking and reasoned order under intimation to him, as expeditiously as possible and preferably within four months from the date of receipt of a copy of this order. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

'gk'

S. R. Adige

(S.R. Adige)
Vice Chairman (A)