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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(16)

OA NO.781/98 AND OA NO.782/98

New Delhi, this the 24th day of November, 2000

HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

OA NO.781/1998

1. Shri S. Sengathir,
S/o Shri M. Selvaraj,
R/o SVPNPA, Hyderabad .....Applicant
(By Advocate : Shri Harvir Singh)

Versus

Union of India and Others

1. Department of Personnel and Training
Ministry of Personnel Public Grievances and
Pensions,
Government of India
North Block, New Delhi - 1

2. Through its Secretary
Ministry of Home Affairs,
Government of India, North Block, New Delhi-1

3. Through its Secretary,
Director
SVP National Police Academy,
Hyderabad - 5000052

4. Chief Secretary, Govt. of Tamil Nadu,
Secretariat Building, Fort St. George,
Chennai (Madras)-600009

5. Chief Secretary,
Government of Rajasthan
Secretrait Building,
Jaipur - 5,
Rajasthan .....Respondents
(By Advocate : Shri V.S.R.Krishna)

OA No. 782/1998
Shri R. Rajasekaran,
S/o Shri M. Rajamankkam,
R/o SVPNPA, Hyderabad .....Applicant
(By Advocate : Shri Harvir Singh)

Versus

Union of India and Others

1. Department of Personnel and Training
Ministry of Personnel Public Grievances and
Pensions,
Government of India
North Block, New Delhi - 1

2. Through its Secretary
Ministry of Home Affairs,

2

Government of India, North Block, New Delhi-1

3. Through its Secretary,
Director
SVP National Police Academy,
Hyderabad - 5000052

4. Chief Secretary, Govt. of Tamil Nadu,
Secretariat Building, Fort St. George,
Chennai (Madras)-600009

5. Chief Secretary,
Government of West Bengal
Secretrait Writers Building,
Calcutta-1, ...Respondents
(By Advocate : Shri V.S.R.Krishna)

O R D E R

By S.A.T. Rizvi, Member (A) :

These OAs have been filed by IPS Officers of 1997 batch (Civil Services Examination, 1996) (for short CSE-1996) impugning the allocation of cadre by the respondents vide their OM dated 6.3.98 (A-1). They have also impugned the corresponding list issued by the SVP National Police Academy, Hyderabad, a little later on 17.3.1998. Both the applicants belong to the OBC category and hail from the State of Tamil Nadu (for short T.N.). The other reliefs sought by them are also identical. In short, the relief sought in each case is allocation of the cadre of the home State of T.N. in accordance with the merits and the ranks of the applicants amongst the insider (T.N.) IPS Officers. Accordingly, these OAs are being disposed of by this common order.

2. The facts contained in these OAs briefly stated are that the applicant in OA No. 781/1998 is stated to be occupying first rank amongst the insider (T.N.) IPS Officers, whereas the applicant in OA No. 782/1998 is the second ranker. The rank in the all India list of the

first applicant was was 330, while that of the other was 338. They have been allocated the service (IPS) as OBC candidates. Both of them joined the Academy at Mussoorie on 7/8.9.1997 and have undergone the foundational course training compulsory for all probationers belonging to the IAS, IPS, IFS and the Group 'A' services. There are six vacancies available in the State of Tamil Nadu for IPS and six candidates, all belonging to the OBC category and to the State of Tamil Nadu, have been selected for appointment to the IPS. However, the first applicant has been allocated to the State cadre of Rajasthan, while the other to the State of West Bengal. One of the six OBC candidates afore-mentioned, who had secured the rank of 244 i.e. higher than both the applicants, failed to join the foundational course. On account of this failure on his part, Shri K.S. Palanisamy's candidature for IPS stood cancelled in accordance with the rules. Accordingly, the name of Shri Palanisamy was deleted from the list of probationers who joined the foundational course at Mussoorie Academy. Against the six aforesaid IPS vacancies in T.N. to be filled as a result of the CSE-1996, two are required to be filled by insider candidates. The applicants have relied on this number (two) and the fact that they are placed respectively at No.1 and No.2 in order of merit limited to the State of Tamil Nadu, after the cancellation of the candidature of the aforesaid Shri Palanisamy, to argue that they are the best claimants for the two insider vacancies. Their contention is that it should be possible to accommodate them in accordance with the roster system of cadre allocation. In their support, they had cited the decision of the Hon'ble Supreme Court in Union of India and Others versus Rajiv Yadav and Others reported as

(1994) 6 SCC 38. Their contention is that following the roster system it should be possible to allocate either of them to the home State of Tamil Nadu against the OBC insider vacancy and/or against one general insider vacancy. The refusal to do so, according to the applicants, is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution.

3. They have reproduced the following extract taken from the judgement in Rajiv Yadav case (supra), in their support:

> ".....it is common knowledge that the SCs/STs candidates are normally much below in the merit list and as such are not in a position to compete with the general category candidates. The "Roster System" ensures equitable treatment to both the general candidates and the reserved categories. In compliance with the statutory requirement and in terms of Article 16(4) of the Constitution of India 22 1/2% reserved category candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. But for the "Roster System" it would be difficult rather impossible for the Scheduled Caste/Scheduced Tribe candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres."

According to the applicants, the implication of the aforesaid Judgement is that the candidates belonging to reserved category should be given preference in cadre allocation over the general category candidates. The applicants being OBC category candidates should accordingly be given preference in cadre allocation for their home State of Tamil Nadu. The applicants also contend that there is the prevailing practice of exchanging general for reserved category vacancies in line with the principles of cadre allocation. By

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citing an example of cadre allocation for Assam-Meghalaya IAS cadre (CSE-1996), the applicants have pointed out that in that case the respondents have allocated one general/outsider vacancy to one reserved (SC/outsider) category candidate, thereby exchanging general vacancy for a reserved category vacancy. They have also pointed out that similarly an insider OBC vacancy has been given to an outsider OBC category. Following this practice, the applicants further contend, any short-fall in the general insider quota should be made up by insider reserved candidates.

4. The applicants have expressed surprise that the respondent No.2 (MHA) should have, in their fax message sent to the respondent No.3 (Director, SVP National Police Academy), brought out the name of the said Shri Palanisamy as the candidate allocated to the home State of T.N. against one insider OBC category vacancy, whereas the name of Shri Palanisamy does not figure in the list issued by the respondent No.3. In support of the relief claimed, the applicants have relied on the order passed by this Tribunal in OA No. 2068/1997 in Sh. Yogesh Deshkukh Versus UOI in which directions similar to the direction sought in these OAs are stated to have been issued.

5. The respondent No.2 (MHA) contest these OAs and have emphasised that the principles of cadre allocation and the Roster System have been correctly followed in these cases and that the applicants have been allocated the States of Rajasthan and West Bengal respectively only in accordance with these principles and no discrimination has been meted out to them in this matter.

6. We have heard the learned counsel and have perused the material on record.

7. During the course of arguments, we had requested the learned counsel for the respondents to produce, for our perusal, a copy of the principles laid down by the government for cadre allocation which have been followed reportedly from 1985 onward without any change and which, according to the applicants, have been cited by the Supreme Court in Rajiv Yadav V/s U.O.I (Supra). No such document has been supplied by the learned counsel. We have, however, perused the judgement of the Supreme Court delivered in Rajiv Yadav, IAS's case (supra), a copy of which has been placed on record. We find that in accordance with this judgement a candidate selected for the IAS (or IPS or IFS) has no right to be allocated to a cadre of his choice or to his own State, as the allotment of cadre is an incidence of service. We find that the Roster System though never notified by the Central Govt., has been explained in the aforementioned letter of the Govt. of India / Ministry of Personnel. The roster system provides that while allocating the SC/ST candidates to their home States (insiders), the vacancies shall be reserved for them in various cadres to the extent the reservation percentage has been provided in direct recruitment to the IAS. However, a full bench of the Central Administrative Tribunal held that Clause (2) of the said letter gives an added benefit to the IAS probationers belonging to the SC/ST categories, which is not permissible under Article 16(4) of the Constitution

of India. The learned Supreme Court allowed the appeal of the Union of India in that case and reversed the Tribunal's decision.

8. The respondents have in their reply stated that out of the six vacancies in the Tamil Nadu cadre of the IPS, three were meant for the general category, one for the OBC and the remaining two for SC/ST candidates. By strictly following the general as well as the reserved 30 point roster, the aforesaid six vacancies were distributed among two insiders (one General and one SC/ST) and four outsiders (two General and one each for OBC and SC/ST). Therefore, according to the respondents, there was no insider vacancy for OBC category in that State for the year in question. According to them, although there was no insider OBC vacancy, the insider SC/ST vacancy (there being no insider SC/ST candidate) was exchanged for the only available (one) OBC outsider vacancy in the State cadre. This insider OBC vacancy thus created was filled by the said Shri Palanisamy, who was placed higher in rank than both the applicants. The applicants could not be accommodated in Tamil Nadu only because the other insider general vacancy was not utilised for allocation of an insider candidate and this happened as no other OBC outsider vacancy was available in Tamil Nadu to facilitate the exchange. It is in this background, according to the respondents, that the applicants have been allocated to the cadres of Rajasthan and West Bengal. The claim of the applicants in these OAs is for the allocation of home State cadre against a drop out vacancy. According to the respondents, the legality of the claim for appointment to a post against a drop out vacancy has already been decided by the Supreme

Court in Shankarsan Dash versus U.O.I reported as (991)SCC (L&S) 800. The claim of Shri Shankarsan Dash was also for appointment to the IPS against a drop out vacancy. Drawing inference from the observation of the learned Court in that case, the respondents have argued that a candidate has no right to claim appointment against a drop out vacancy. The respondents have pointed out that besides Shri Palanisamy, two other candidates had also declined to join the IPS on the basis of the CSE-1996. They were considered and allotted to UP and West Bengal cadres respectively. According to the respondents, the resignation by any candidate for any reason is not to affect the cadre allocation and this has been the practice all along. The cadre allocation is to be made on the basis ofthe initial merit list prepared against the notified vacancies. Such allocation, once decided, does not get affected by subsequent changes. The respondents also submit that iff all the three candidates who have resigned/declined to join the IPS, are excluded at this state, the cadres of a very large number of candidates will undergo a sea change, thereby unsettling the settled issues.

9. The respondents have denied that the Hon'ble that the Hon'ble Supreme Court have ever held that the candidates the candidates belonging to the reserved category should be given preference in cadre allocation over general category candidates. In the circumstances, there is no case in favour of the applicants for allocation of home State cadre. Further more, it was necessary for the applicants to implead all the other candidates whose cadre allocations are likely to be adversely affected as a result of exclusion of one or

more drop out candidates. Having not done so, their applications would deserve to be dismissed on this ground also.

10. Refuting the allegation made by the applicants in respect of the practice followed in Assam-Meghalaya cadre, the respondents have stated that out of the three vacancies in that cadre for the year in question, one was general (unreserved), another was for OBC and the third one was for SC/ST. Against the un-reserved (General) vacancy, a candidate, who had secured fifth rank and belonged to the SC category was recommended for appointment on the ground that by virtue of his rank he was to be considered/recommended for appointment to the IPS against an un-reserved (General) vacancy. As such, the contention of the applicant that, in that joint cadre, there was an exchange of a general vacancy for a reserved vacancy is incorrect. The respondents have emphasised their contentions that the allocation of all the candidates of a particular batch is done in a single stroke, whether a candidate is exempted or not or whether he has joined or not and the cadre allocation is always made on the basis of the initial list prepared against the notified vacancies.

11. The respondents also contend that the applicants have not exhausted the administrative remedies available to them under the rules and in the first instance they should have submitted a representation before the respondent No.2. Hence on this ground also these OAs do not lie.

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12. According to the applicants, the respondents have suppressed the fact that there was one OBC insider's vacancy in the State of Tamil Nadu. (This obviously had arisen on account of Shri Palanisamy's resignation). They have protested against the allocation of Tamil Nadu cadre to someone (Shri Palaniswamy) who did not join the foundational course and had submitted his resignation from the IPS in September, 1997, whereas the cadre allocation in respect of the 1997 batch IPS officers was made much after i.e. on 6.3.1998. They have also emphasised the fact that the vacancies in the IPS were notified on 24.6.1997 and the cadre allocation was made as late as on 6.3.1998, thereby resulting in a time interval of nine months and during this long enough period it should have been possible for the respondents to ascertain the number of officers who did not join the service and based on such information the respondents should have made cadre allocation only to such officers who had joined the service instead of making allocations in favour of those, who had refused to join or had resigned. On the basis of the information revealed by the respondents, the applicants have stated that the respondents have committed a wrong act by making cadre allocations in respect of not only one (Shri Palaniswamy) but in respect of three officers, who had declined to join the IPS. This, according to the applicants, shows non application of mind. The applicants have stated that as a result of the wrong policy followed by the respondents in making cadre allocations by including at the time of such allocation even those who had resigned or had refused to join the IPS, the actual picture that has emerged in respect of Tamil Nadu is drastically different from the picture contemplated in accordance

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with the policy. According to the policy, out of six candidates for the State of Tamil Nadu, three could be General candidates (two outsiders and one insider), one OBC (outsider) and two SC/ST (one insider and one outsider). Thus three vacancies were to be filled up by reserved candidates (one OBC and two SC/ST). Against this picture, the respondents have filled up five vacancies (out of six) by general candidates (all outsiders) and none from the reserved candidates has been allocated the State of Tamil Nadu.

13. Both the applicants in their rejoinders have inter alia reiterated that the principles of cadre allocation have not been strictly followed and that is why they have not been allotted to the State of Tamil Nadu. To buttress their argument, they have come out with the names of four OBC/SC candidates to demonstrate that the cadre allocation has not been properly made by the respondents. The four officers named by the applicants are -(1) Binod Kumar (OBC), holder of 4th rank (2) Shri S.P. Kumar (SC), holder of 5th rank (3) Shayma Rao (OBC), 34th rank and (4) Shri Hari Om (OBC) 38th rank.

14. In respect of the afore-mentioned four reserved category candidates, the applicants have pointed out that the fourth ranker Shri Binod Kumar (OBC) has been treated as an OBC and has been appointed as an OBC, whereas he was entitled to appointment in his own right as a general (un-reserved) candidate. At the same time, the respondents have treated the fifth ranker Shri S.P. Kumar, who is a S.C. candidate as a general candidate which, perhaps, is the right thing to do. At the same

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time the 34th ranker Shri Shayama Rao, who is an OBC candidate, has been correctly treated as an OBC and allocated State cadre as an OBC category candidate, whereas the 4th candidate namely Shri Hari Om, who is an OBC, has been treated by the respondents as a general candidate and allocated to UP cadre. According to the applicants, there is no basis whatsoever for treating a high ranking OBC/SC candidate as general or as reserved candidate at will in the manner done by the respondents.

15. The applicants have brought to light another case namely that of Shri T. Kandaswamy, who was earlier allocated to Indian Customs and Central Excise Service, but was later allowed to join the IPS and allocated to Bihar cadre. The applicants have, therefore, asserted that it is wrong to say that cadre allocation is done in a single stroke. The applicants' assertion is that such allocation is done and should be done by taking into consideration all relevant factors including the actual availability of candidates for cadre allocation. By highlighting the case of Shri Kandaswamy, the applicants have sought to deny the statement of the respondents that cadre allocations are made on the basis of initial list. In the case of Shri Kandaswamy, such allocation was made not on the basis of initial list, but in the light of his allocation to the IPS after he had earlier joined the Indian Customs and Central Excise Service.

16. In their support, the applicants have cited the decision taken by the Principal Bench of this Tribunal in OA No. 2506/1992 in D.S. Chaudhary Versus U.O.I. and Others. In that case one candidate (Shri P.K. Goel) had already become a member of the IRS w.e.f. 20.8.1990 on

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the basis of 1988 examination but was allocated to UP cadre as an IPS officer on the basis of the CSE-1989. In that case also the cadre allocation was made on 15.2.1991 i.e. much after the said candidate (Shri P.K. Goel) had formally joined the IRS. The applicant in that case was allocated to Andhra Pradesh Cadre. However, if the said Shri P.K. Goel had not been considered for cadre allocation and had been taken out of the reckoning, the applicant in that case would have been allocated to the State of U.P. This applicant was, therefore, deprived of a valuable opportunity to be allocated to the UP cadre entirely due to the incorrect action taken by the respondents while making the cadre allocations. That applicant had belonged to Delhi and had not indicated his preference for Delhi for cadre allocation purposes. He was placed at No. 202 in rank, whereas the said Shri P.K. Goel was placed at No. 198. In that order, the Division Bench of this Tribunal held that though "...a person appointed to an All India Service has no right to be allocated to the State of his choice or his home State, yet he has a limited right of being considered in accordance with the law or the policy decision prevailing at the relevant time". The Division Bench had also held that "their claim to be allocated to a different cadre on the basis of these guide-lines cannot be ignored". While observing as above, the Division Bench had referred to the principles of cadre allocation and the guide-lines followed by the Central Government ever since 1985 and which were applied/upheld by the Hon'ble Supreme Court in the Rajiv Yadav case (Supra). On the basis of their findings in that case, the Division Bench had ordered that the applicant be allocated to UP cadre.

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17. In another case (OA No. 2124/1997) decided by the Punjab Bench of this Tribunal on 27.7.1998 a mistake or omission had taken place in making appointment to the IFS (Indian Foreign Service). According to the respondents' own version in that case, the Central Govt. had placed an indent for a total number of 16 candidates for 1995 batch which included five OBC. Against this only four OBCs joined, leaving a shortfall of one in that category. This was wrongly shown, according to the respondents themselves, as a shortfall in SC category. The shortfall in question should legitimately have been carried forward to 1996 as for OBC but that was not done. For 1996 batch 14 vacancies were notified. However, in the 200 point Roster, the candidates were considered only up to the Roster Point 42; whereas the Roster Point 43 should also have been considered and this latter point would have gone to an OBC. The applicant in that case was fourth in merit as an OBC candidate and up to three candidates of that category had been appointed. It was found in that case that if the respondents had carried forward the 1995 OBC vacancy or alternatively had included the roster point 43 also, the applicant in that case would have been appointed to the I.F.S. In result, the Division Bench had ordered the appointment of the applicant to the Indian Foreign Service. It is to be noted that in that case also one candidate namely Ms. Rasmita Rani of 1995 examination had resigned in 1996 and that one was the one vacancy which should have been carried forward to the 1996 examination but was not so carried forward.

18. A third case brought to our notice relates to CSE-1993. The applicant in that case was a SC candidate

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from Andhra Pradesh and had been placed at No. 276 in rank and had been selected for the IAS. He did not indicate preference for his home State (A.P.) for allocation of cadre and was allocated to Sikkim cadre on 18.1.1995. Four candidates, in all, were to be appointed in the Andhra Pradesh cadre that year. The matter was considered by the Hyderabad Bench of this Tribunal in OA No. 1285/1995. The point at issue was the application of the roster system and the prescribed guidelines in a fair and proper manner right from the time in 1985 when the arrangement was reintroduced with certain modification. The guidelines, in question, had become enforceable from CSE-1984. The contention raised in that case was that if the aforesaid guidelines/formula had been applied w.e.f. the CSE-1984, there would have been two insider vacancies in A.P. cadre, against one of which the applicant could be adjusted. Accordingly, the Tribunal by its Order dated 14.3.1998 directed the respondents to re-work the insider vacancies starting CSE-1984 and consider allocating the applicant to A.P. as an insider even if he had not indicated any preference for his home cadre.

19. The fourth case brought to our notice by the learned counsel for the applicants was decided by the Supreme Court on 16.11.1995 in Jai Narain Ram V/s State of UP and Others reported as 1996 SCC (L&S) 314. In this particular case four posts in the ranks of Treasury/Accounts Officers out of the total 15 vacancies for which the indent was placed by the UP Govt. with the UP PSC were meant for the SC category. All the four SC candidates selected in the relevant examination failed to join the services. The last ranker amongst those four

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candidates had secured 400 marks. The applicant in that case was not one of them. Instead he was placed at No.4 from the last selected candidate referred to. That is to say, the applicant had secured in that examination 399 marks along with three others placed above him, who had secured 399, 400 and 400 marks respectively. The respondents in that case took the view that the applicant along with those above him could not be considered as the UPPSC had not been asked to prepare a waiting list. The applicant and the three others above him also happened to be SC candidates. The respondents had submitted that the vacancies cause due to non-joining by the selected SC candidates would be filled up by reserved candidates. In the circumstances, the learned Court took the view that the applicant and the three others above him, all SC candidates, should be inducted in place of the four SC candidates who had not joined. The denial of appointment in that case to the applicant and the others was held by the learned Court to be un-constitutional having regard to the provisions of Article 14 and Articles 16 (1) and 16 (4) of the Constitution.

20. The Principal Bench of this Tribunal had decided yet another case in OA No. 2068/1997 on 7.11.1997 to which a reference has been made by the learned counsel for the applicants. In that case the candidature of an OBC candidate was initially rejected on a point of dispute regarding the caste to which the candidate belonged. That issue was sorted out and the candidate was allocated to West Bengal cadre of the IPS on 4.11.1996 based on the CSE-1994. The aforesaid delay, which took place in the resolution of the dispute regarding the candidate's caste was taken advantage of by

the respondents, who made cadre allocation ignoring the candidature of the applicant in that case on the ground that his name was not then under consideration for the purpose of cadre allocation. The Tribunal ordered re-consideration of the applicant's case by asking the respondents to treat the applicant as an originally selected candidate (as if no dispute regarding caste existed), and to allocate to him his home cadre by applying the guidelines in question.

21. From the detailed discussions made in the preceding paragraphs, we have seen that the averment of the respondents that cadres are allocated strictly on the basis of initial list and such allocation is done by one stroke does not hold good. We have also noticed that the respondents have not acted correctly in certain cases of OBC and SC candidates in regard to they being treated as a general candidate or as a reserved candidate for the purpose of appointment as also for the purpose of cadre allocation on the basis of their individual merit. The applicants have brought to our notice four different cases in which the respondents may not have acted correctly as above. We have also failed to appreciate the reasoning behind the respondents' averment that cadre allocations are made or have to be made strictly on the basis of the initial lists notwithstanding any number of candidates having not joined the service or having resigned before the allocations are made. We are convinced that cadre allocation should be made only after ascertaining the position in regard to those not likely to join the service. For instance, among other categories, the candidates, who fail to join the National

Academy in time without any justification should necessarily be discarded/left out before cadre allocations are made.

22. The judgements cited above are also highly relevant in the context of the present case, and on the basis of these earlier decisions and the facts and circumstances stated in the previous paragraphs, we will be within our rights to direct the respondents to allocate Tamil Nadu cadre (home State) to one of the applicants namely N. Sengathir, who was entitled to be considered in his own right due to Shri Palaniswamy having resigned. We order accordingly.

23. In respect of the other applicant, the direction which we like to give is formulated as follows:-

The respondents will review cadre allocations already made having regard to (1) the mistakes that might have been committed in treating OBC/SC/ST candidates as general candidates or as reserved candidates for appointment on the basis of their individual merit, (2) the fact that in all three persons (including Shri Palaniswamy) selected for the IPS from the same examination (CSE-1996) had resigned or had expressed their intention not to join the IPS, (3) the carried forward vacancies, if any, of OBC/SC/ST category from the previous years, and (4) the letter and spirit of the roster system and the principles of cadre allocation upheld by the Supreme Court in UOI and Others V/s Rajiv Yadav (supra), and thereafter to consider allocating the Tamil Nadu cadre to Shri R. Rajasekharan.