

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(NB)

O.A./XXXX No. 2361 /1995 Decided on: 13.8.96

Miss Anjana Singh

..... APPLICANT(S)

(By Shri A.K. Behera Advocate)

VERSUS

The Secretary, Min. of Personnel & Ors. RESPONDENTS

(By Shri V.S.R.Krishna, for R-1 Advocate)
Shri Madhav Panikar, for R-2
OD RAM None for other respondents.

THE HON'BLE SHRI S.R.ADIGE, M(A)

THE HON'BLE ~~XXXXXX~~ / DR. A.VEDAVALLI, M(J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal? NO

Adige
(S.R. ADIGE)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2361/95

(14)

New Delhi this the 13th Day of August, 1996

Hon'ble Shri S.R. Adige, Member (A)

Hon'ble Dr. A. Vedavali, Member (J)

Miss Anjana Singh,
D/o Sqn. Leader K.N. Singh (Retd.),
R/o C-4F/91,
Janakpuri,
New Delhi-110 058

... Applicant

(By Advocate: Shri A.K. Behera)

Vs

1. The Secretary,
Ministry of Personnel
Grievance and Pensions,
North Block,
New Delhi-110 001.

2. The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 001.

3. The Chief Secretary,
State of Nagaland
Nagaland Secretariat
Kohima.

4. The Director,
Sardar Vallabhbhai Patel,
National Police Academy,
Hyderabad.

... Respondents

By Advocate: Shri V.S.R.Krishna for R-1

Shri Madhav Ranikar for R-2

None for other Respondents

J U D G M E N T

Hon'ble Shri S.R. Adige, Member (A)

In this application Miss. Anjana Singh has prayed for a direction to set aside the respondent's letter No. 13016/1/94-AIS (I) dated March 1995 allotting her to the (Annexure A-1) Nagaland Cadre of the IPS/ and has prayed for a change to Maharashtra, or Rajasthan, or Gujarat, or Uttar Pradesh or Madhya Pradesh cadre. She has also prayed for quashing of the letters dated 14.6.95 (Annexure A-2) and dated 16.11.95

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(Annexure A-3) rejecting the prayer for change of cadre.

2. Admittedly the applicant who is unmarried and belongs to the general category appeared in the Civil Service Examination, 1993 in which she secured 104th position in the All India Merit List on the basis of which she was offered the IPS (1994 batch) and has been allotted to Nagaland cadre. Her case is that DP&T's letter No. 13017/23/91-AIS(I) dated 18.6.1991 (Annexure A-4) lays down that having regard to the difficulties faced by AIS officers allotted to N.E. States, Government had decided that women probationers would not be allocated to the N.E. States for a period of five years commencing from the C.S. Exams. 1989 (1990 Batch) and single women officers working in these regions would be allowed cadre transfer to any other State other than Home State and in case of woman AIS Officers married to AIS Officers, they would be allowed a short term deputation along with their husband to a State other than Home State, for a period of three years. The applicant contends that this letter dated 18.6.1991 was based upon ^{the} worsening law and order situation in the N.E. States, which still continues, so much so that ^{the} Special Army Act has been extended to those States. It is also contended that the applicant had appeared in the CSE 1992 and had been allocated to the IRS, but she had subsequently appeared in the CSE 1993 and on the basis of the extant rules/policy in respect of each service had expressed her performance for the IPS, but despite those policy guidelines of not allocating single IPS lady officers to N.E. State, she had been allocated to Nagaland State and her representation against the impugned allocation was rejected

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on the ground that the dispensation given to lady officers of not being allocated to N.E. State had been withdrawn with effect from CSE 1993 onwards. The applicant contends that till date she has not been supplied with a copy of the withdrawal of the aforesaid policy. Her contention is that as there is no such withdrawal, the policy guidelines which were based upon rational principles still stand, and under the circumstance the rejection by the respondents of the applicant's prayer for a change of cadre from Nagaland is illegal, arbitrary and unsustainable in law compelling her to file this O.A.

3. The Union of India in their reply have resisted the O.A. and have contended that as a Member of an All India Service, the applicant has to serve either in the Union or the State to which she has been allocated, so long as she is allocated to a State in accordance with the policy of the cadre allocation, which has been framed by them in the larger National interest, and that policy is applied to all members of the service, the applicant can have no legitimate grievance merely because the cadre to which he/she had been allocated does not suit him/her. The U.O.I. states that the principles of cadre allocation have been enunciated in the DP&T's D.O. letter dated 30.5.1985 (Annexure R-1), which has been upheld by the Hon'ble Supreme Court in Rajiv Yadav's case 1994(6) SCC 38 and the applicant has been allocated to Nagaland State as per those principles. They state that no doubt considering the law and order situation in N.E. States and J&K during 1990, the Central Government decided not to allocate single lady AIS officers to these States for a period of 3 years ending with the allocation of candidates appointed on the basis of CSE 1992, but the position was

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reviewed in 1993 and it was decided that the special dispensation be withdrawn from CSE 1993 i.e. for probationers of 1994 batch and hence the applicant who is a 1994 batch probationer has no claim to that special dispensation.

4. Respondent No.3 (Govt. of Nagaland) has also filed reply, in which it has been conceded that in accordance with the present policy which was determined in consultation with respective States, including the State of Nagaland and which according to those records is still continuing, single Women IFS Officers are not allocated to N.E. States, in view of the worsening law and order situation in these States. It is further stated that while allocating the applicant to Nagaland State, the Govt. was not informed that she is a Single lady IFS Officer. While denying that the law and order situation is at its lowest ebb, it is admitted that the Special Army Act was extended to Nagaland w.e.f. March, 1993 and the rationale behind the policy guidelines dated 18.6.91 of not allocating single lady AIS Officers to N.E. States were based on the worsening law and order situation in those States. In conclusion Respondent No.3 has stated that the prayers of the applicant are in consonance with the current policy guidelines in respect of single lady IFS Officers and they would only be happy in case the same were allowed, as the State finds it very difficult to provide security cover

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to the service probationer in that State.

5. In the rejoinder, the applicant has sought to reject the contentions of the Union of India (Respondents 1 and 2) and has broadly reiterated the contents of the OA. The case of Ms. Punya Salila IAS (1994) batch regular recruit) has also been cited, in whose case by order dated 10.1.94 (annexed with the rejoinder) cadre change has been allowed from Assam Meghalaya cadre to AGMOT Cadre.

6. We have heard applicant's counsel Shri A.K.Bahera and counsel S/Sh. V.S.R.Krishna and Madhav Panikar for Respondents 1 and 2. None appeared for Respondent 3. We have perused the materials on record.

7. While Shri Bahera has emphasised that the policy guidelines dated 18.6.91 are still in force, under which the applicant has a legally enforceable right to claim change of cadre, the respondents have furnished for our perusal a copy of the notings of July, 1993 of the relevant file maintained in the PM office, which are taken on record. In the note dated 12.7.93 of the Jt. Secretary to P.M. it has been recorded that the P.M. has approved the proposal to withdraw the special dispensation given in respect of single lady officers belonging to the N.E., J & K and Punjab Cadres.

8. Shri Bahera has vehemently argued that the letter dated 18.6.91 communicating the policy guidelines could, if at all, only have been withdrawn by another official communication to

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all concerned, and the respondents therefore cannot claim that merely because of some notings made in a file, the policy guidelines have been withdrawn. He has contended that if those guidelines were indeed withdrawn, that decision should have been incorporated in a proper Govt. communication made available to all concerned, and in the absence of any such communication, the policy decision contained in letter dated 18.6.91 is still in force and the non-adherence to that policy decision by the UOI is arbitrary and illegal. In this connection, it has been stressed that the policy decision dated 18.6.91 was admittedly framed in consultation with the concerned State Govts under Rule 5(1) IFS (Cadre) Rules and if the same was to have been withdrawn, this could have been done only with prior consultation, which had to be meaningful, and the consent of the concerned State Govts. could not be assumed. As the State Govt. of Nagaland in their counter affidavit had expressed unawareness of any withdrawal or change in that policy decision, it was evident that no prior consultation had taken place. The importance of policy decisions being framed, modified or withdrawn only through properly authenticated instruments of Govt. signed by the competent authority and available for the information of those concerned was emphasised by Shri Bahera and in this connection he cited the rulings in AIR 1980 SC 1230 Charles K. Skaria & others Vs. Dr. C. Mathew &

24

others; 1952 SCR 110 Harla Vs. The State of Rajasthan; 1992(22) ATC 172 K. Lakshamana Vs. C. S. Kerala. Support was also sought to be drawn from the Govt. of Nagaland's own affidavit, wherein it had been conceded that the circumstances which led to the issue of the policy decision dated 18.6.91 still persisted and the difficulties expressed by the State Govt. in providing protection to single lady IAS officers in the State. The case of Ms. Punya Salila (Supra) was also cited by Shri Bahera where such a cadre transfer had been allowed in the case of a lady IAS Officer of the 1993 batch.

9. On the other hand respondents' counsel stated that after the Hon'ble Supreme Court's ruling in Rajiv Yadav's case (Supra) making the central Govt. the sole authority to allocate Members of the service to various cadres, and holding that a selected candidate had no right to be allocated to a cadre of his choice or to his home state, allotment of a cadre being a mere incidence of service, the applicant had no enforceable legal right to claim a change of cadre on the basis of the special dispensation contained in letter dated 18.6.91 which in any case had been withdrawn by notings of P.M's office of July, 1993. It has furthermore been contended that Ms. Punya Salila belonged to the 1993 batch in whose case that special dispensation was still in force. The withdrawal of the special dispensation was made effective from the succeeding i.e. 1994 batch to which the applicant belonged, and hence the applicant could not claim

hostile discrimination vis-a-vis Ms. Salila. No lady AIS officers of the 1994 and succeeding batches had been granted this special dispensation, in respect of whom the applicant could claim she had been discriminated against. In so far as the Nagaland State Government's affidavit was concerned, a copy of letter dated 31.5.96 from Respondent No.1 to their counsel was shown to us which is taken on record wherein it was stated that the Nagaland State Govt. was perhaps not aware of the withdrawal of Govt. of India's policy on non-allotment of single women IPS officers to NE States w.e.f. the Civil Services Exam., 1993. Referring to the Hon'ble Supreme Court's ruling in Rajiv Yadav's case (Supra) making the Central Govt. the sole authority to allocate members of the services to various cadres, this letter further states that the Govt. of Nagaland had been informed that the applicant was not the only lady IPS officer to be allocated to N.E., J&K and Punjab and refers to Ms. Sikha Goel who has been allocated to J&K; Ms. Neerja to Punjab; and Mrs. Neena Singh to Manipur-Tripura cadres. The letter further states that the Secretary, DOPT had advised the Chief Secretary, Nagaland to withdraw the affidavit filed by him in the aforesaid case and

9
22

file an appropriate reply in conformity with the policy in vogue.

10. We may mention that till the date of hearing, no prayer for withdrawal of their reply affidavit with permission to file a fresh reply had been made by the Nagaland State Govt. and none appeared on their behalf either.

11. We have given the matter our careful consideration. We are of the view that judicial intervention would be warranted in this case only if the applicant can successfully establish that she has a legally enforceable right to claim a change of cadre.

In view of the Hon'ble Supreme Court's ruling in Rajiv Yadav's case (Supra) making the Central Govt. the sole authority to allocate members of the services to various cadres, and holding that a selected candidate has no right to be allocated to a cadre of his choice or to his home State, allotment of cadres being a mere incidence of service, the applicant has no enforceable legal right to claim a change of cadre and the rulings relied upon by Shri Behera do not change that legal position.

The Hon'ble Supreme Court's ruling in 1952 SCR 110 Harla Vs. State of Rajasthan is in respect of law being promulgated or published in the interests of natural justice before it becomes operative. The letter dated 18.6.91 relates to no law and hence that ruling does

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not help the applicant. For the same reason the Hon'ble Supreme Court's ruling in AIR 1980 SC 1320 (Paragraph 19) (K. Skaria Vs. C. Mathew, which quotes Harla's case (Supra) also does not help the applicant. As regards the third ruling, reliance has been placed on paragraph 25 of the judgment in K. Lakshmana Vs. Chief Secretary, Kerala Govt. 1992 (22)ATC 172 wherein it has been stated that "an order when passed on the files will not be final without being issued publicly and known to affected parties". This principle is [↑] not doubt unexceptionable, but the applicant has not been able to cite a single instance where the special dispensation contained in letter dated 18.9.91 was followed from Civil Services Exam., 1993 (1994 batch) onwards, from which we can only conclude that the withdrawal of the special dispensation from CSE, 1993 onwards had in effect become final.

12. The applicant was allocated to Nagaland State in accordance with the principles of cadre allocation enunciated in DOPT's d.o. letter dated 30.5.85 (Ann. R-1) which have been upheld by the Hon'ble Supreme Court in Rajiv Yadav's case (Supra). The applicant rests her claim basically on the contents of respondents' letter dated 18.6.91, but as the special dispensation contained in that letter was withdrawn from CSE, 1993 onwards (1994 batch to which the applicant belongs) she cannot get the benefit of that dispensation. The fact that no communication was issued formally withdrawing the special dispensation

14

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contained in that letter, does not mean that the dispensation was not withdrawn, because the applicant has not been able to cite a

single case where that dispensation was made available to probationers of the 1994 batch like the applicant, in respect of whom the applicant could successfully plead that she had been discriminated against. An interim order dated 29.12.94 in the case of one Ms. Malini Krishnamoorthy in OA-1514/94 filed in CAT, Hyderabad Bench has also been filed, but Ms. Krishnamoorthy is of CSE 1992 (1993 batch) unlike the applicant who is of CSE 1993 (1994 batch) and hence that interim order in no way helps the present applicant, particularly in the absence of final orders if any in that O.A. Thus the special dispensation contained in letter dated 18.6.91 having been withdrawn from CSE 1993 (1994 batch) onwards as per action of the UOI, even if no formal communication to that effect was issued, it cannot be said that their action in refusing the applicant a change of cadre on the basis of that letter dated 18.6.91 is illegal, arbitrary, discriminatory or otherwise violative of Articles 14 and 16 of the Constitution.

13. Before parting with the case, we may however, advert again to the affidavit reply filed by the Nagaland State Govt. As stated above, no prayer for withdrawal of that reply

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with permission to file a fresh reply has been made. It is therefore presumed that the State Govt. of Nagaland adheres to its reply, in which the Chief Secretary of the State Govt. who is the senior most functionary in the official hierarchy has stated that the rationale behind the policy of guidelines dated 18.6.91 was the worsening law and order situation in the N.E. States and since March, 1995 the Special Army Act has been extended to Nagaland State. In that reply the Chief Secretary has also stated that the answering respondents would be only too happy if the applicant's prayers were allowed, as the State Govt. finds it very difficult to provide security cover to service probationers in the State.

14. In the facts and circumstances of this case therefore, while the applicant has been unable to establish successfully a legally enforceable right which would warrant our judicial intervention in this matter, if upon a fresh representation made by the applicant, Respondents No.1 and 2 are inclined to reconsider the applicant's prayer in the light of the contents of the reply of Respondent No.3, in exercise of their administrative discretion, nothing contained in this judgment will operate as a bar to their doing so.

15. This OA is disposed of as in paragraph 14 above. No costs.

A Vedavalli
(DR .A.VEDAVALLI)
Member (J)

S.R.Adige
(S.R.ADIGE)
Member (A)