

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

R.A. No. 28 of 1998  
M.A. No. 276/98 In  
O.A. No. 2068 of 1997

New Delhi this the 9<sup>th</sup> day of April, 1999

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)  
Hon'ble Mr. T. N. BHAT, MEMBER (J)

Union of India  
represented through  
Secretary,  
Department of Personnel, P.G. and Pensions,  
Department of Personnel & Training. ..Review  
Applicant

By Advocate Shri V.S.R. Krishna.

Versus

Shri Yogesh Deshmukh  
Quarter No.155, Sector-III,  
Sadiq Nagar,  
New Delhi. ..Respondents  
in the RA

By Advocate Shri J.S. Rawat.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

In this Review Application, the review applicant (respondents in the OA) seeks to review the observations of the Hon'ble Member (A) who has dealt with the procedure adopted by the respondents in the allocation of "insider" vacancies for reserved candidates purportedly to be in consonance with the broad principles of allocation as notified by the respondents in their D.O. letter dated 30/31 May, 1995. The observations of the Hon'ble Member (A) in paras 2 and 3 of the aforesaid order are reproduced below:-

"2. The respondents in para 4(f) of their counter-reply have stated that there were eight (8) vacancies, out of which four were for reserved categories (i.e. 2 for SC/ST and two for OBC). As per 3 point Roster, out of these

8 vacancies, 2 were for insiders (1 for OBC and one for SC/ST) and 6 were for outsiders (4 for general, 1 for OBC and one for SC/ST). It is stated by the respondents that at the time of cadre allocation, no SC/ST and OBC candidates were available as internal candidates, and the applicant was not allocated to any Service. The respondents have, therefore, admitted that the two insider "reserved" vacancies were diverted towards general insider candidates as they were available. No provision of any rule or statutory instruction has been shown to us, according to which such a diversion of reserved vacancies for general candidates has been authorised. Even under extant instructions governing filling up of reserved vacancies, it is provided that if reserved vacancies could not be filled up due to non-availability of reserved candidates, the vacancies are to be carried over to the next recruitment year. In any case, as per the averments of the respondents, in the vacancy position as obtaining for the M.P. cadre, there were no vacancies available for "Insider general candidates" as all the four general vacancies out of eight are stated to be for outsiders. In the circumstances, the diversion of reserved Insider vacancies for being filled up by general Insider candidates, does not appear to be correct.

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3. Looking from another angle, such a diversion defeats the very purpose of providing reserved vacancies for "Insider" reserved candidates as per the "Roster System" as by this diversion, they will not be adequately represented in their Home State and this will not be in consonance with the spirit of the Roster System insofar as it applies to reservation".

2. The Review Applicants in the Review Application point out that the above observations are opposed to facts and law. It is stated by the applicant as follows:-

" That there has never been any policy, practice or principle for carry forward of insider vacancies in a cadre remaining unfilled by reserved or general candidates as the case may be in the context of cadre allocation and this has been settled by the judgment of the Apex Court in the case of Union of India Vs. M. Kithan. It is also stated that general insider candidates to reserved insider

vacancies when reserved insider candidates were not available, were not incorporated in the principles of cadre allocation of 31.5.1985 but that does not signify that the practice had been given up. The practice of allocation of general insider candidates to reserved insider vacancies when reserved insider candidates were not available, were not incorporated in the principles of cadre allocation of 31.5.1985 but that does not signify that the practice had been given up. The principles of Cadre allocation of All India Services explaining the Roster system that was detailed in a statement in reply to Lok Sabha Unstarred Question No.5685 replied on 4.9.1991 clearly stated that in respect of reserved candidates a procedure similar to the one adopted for general candidates would be adopted (para vii of the Lok Sabha reply) and this is at Annexure p-1 of the Review Application".

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3. The applicants in the RA maintain that there has been no diversion of reserved vacancies to the general candidates which aspect is related to the principles of recruitment but in the matter of allocation of cadres to recruits, where insider candidates are not available, the vacancy-slots are filled by Insiders of the other category wherever it is permissible to do so and otherwise by outsiders. It is also stated that the above practice did not alter the recruitment in any manner whatsoever and no reserved vacancy to which recruitment is made is diverted to a general candidate in the process.

4. We have considered the submissions in the application.

5. The observations of the Hon'ble Member (A) in the aforesaid order are in the nature of obiter dicta and no direction on the basis of this has been made. The

observations at best be the personal opinion of the Hon'ble Member (A) and no application for review of the observations are maintainable under Order 47 Rule 1 CPC and the relevant provisions of the Section 22(3)(f) of the Administrative Tribunal Act read with Rule 17 of the CAT (Procedure) Rules, 1987. On this ground alone, this Review Application is not maintainable and can be rejected.

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6. Be that as it may, it is stated in the observations made by the Hon'ble Member (A) that in Union of India Vs. Rajeev Yadav, the Hon'ble Supreme Court observed " the question of testing the principles of allocation as contained in clause (2) of the letter of 31.5.1985 on the anvil of Article 16(4) does not arise. Having met with the statutory requirement and in terms of Article 16(4) of the Constitution of India 22.1/2% of reserved candidates are recruited to the IAS. 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 castes/scheduled tribes candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres. It was in this context that the procedure for filling up the 8 vacancies of the M.P. cadre was examined. Out of 8 vacancies it was stated that 4 vacancies were for reserved candidates including the OBC. As per the roster system followed in that case 2 were for insiders (one for OBC and one for SC) and 6 were for

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outsiders (4 for general, one for OBC and one for SC/ST), i.e., to say 2 insiders both reserved and six outsiders (4 general and 2 reserved). The above distribution and the roster system also ensures 4 out of 8 vacancies for reserved candidates. It is stated by the respondents in the OA that the two insiders reserved vacancies could not be filled as no candidates were available and, therefore, these vacancies were filled by the general insider candidates. It was, therefore, observed " that no provision or any rule or statutory instruction has been shown to us, according to which such a diversion of reserved vacancies for general candidates has been authorised." The applicants in the RA have referred to the statement laid on the table of Lok Sabha in respect of Lok Sabha starred Question No.5685 on 4.9.1991, which contained the principles of allocation. In Clause (vii) of the principles of allocation as in the statement it is stated as follows:-

"(vii) In the case of candidates belonging to the reserved category, such of the those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general candidate would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details should be followed. If there is a shortfall in general "insiders" quota it could however be made up by "insider" reserved candidates". (emphasis added)

7. The applicants in the RA referred to the statement in Clause (Vii) above, namely, in respect of other candidates belonging to the reserved category a procedure similar to the one adopted for the general candidate should be adopted. This, in our view, refers to such of the reserved category candidates who by their merit position could not be treated on par with general candidates for purposes of allotment unlike in the case of reserved candidates who on the basis of merit could have been appointed to service even in the absence of reservation, although they will be considered against reserved vacancy. They will be allotted on the basis of the roster system. As may be seen in the above paragraph, it is stated that if there is a shortfall in the general "insiders" quota it could be made up by "insider" reserved candidates. But in the instant case of M.P. cadre allocation, there is a shortfall in the insider reserved quota and there is no specific provision in the aforesaid paragraph for making up the shortfall by insider general candidates. It was in this context that the observation has been made and, therefore, we do not find any error or omission. In the case of U.O.I. Vs. M. Kithan, the point involved was the carry over of general or reserved vacancies as a policy or practice. It was noticed that no order/instruction was produced. But in the present case, it was pointed out that no rule or statutory instruction authorising diversion of reserved vacancies for general candidates was shown and, therefore, the above decision is not directly applicable to the facts of this case.

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8. To illustrate further, supposing there are 100 successful candidates against 100 vacancies, 50 of which were reserved. These reserved vacancies are distributed among the various cadres as per principles of cadre allocation. In other words, the reservation in appointments is reflected in the vacancies allotted to the various cadres on the basis of the same percentage. On this basis there are, let us say six reserved vacancies in a cadre. There could be certain number of "insider" vacancies and certain number of outsiders vacancies, say 4 outsiders and 2 insiders. But for all these reserved vacancies, there are reserved candidates available though they may not be exactly in the ratio of Insider/Outsider quota as per Roster System. However, in the example cited above, we have taken the same ratio of 2:1 as being available. If Insider reserved candidates are not available in a particular cadre, it can be filled up by outsider reserved candidates, who will be available inasmuch as all the 50 reserved candidates are available in this recruitment for being allocated and, therefore, there can be no question of any shortfall and, therefore, there would ordinarily be no question of carry over of vacancies also. But from the M.P. cadre allocation as per the information furnished by the respondents, the reserved insider vacancy has been diverted to a general insider candidate when there was no insider general vacancy as per the roster. By this diversion, there was a shortfall in the reserved category although in the overall recruitment, there is no shortfall in the number of available reserved candidates. This shortfall was not

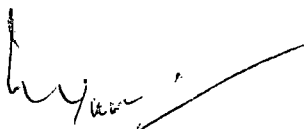
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because of non-availability of any reserved category candidate as such, but because of non-availability of reserved insider candidate. In the circumstances, this vacancy ought to have gone to another reserved candidate who may be outsider to the cadre. It is not clear how all the reserved candidates available upto the prescribed percentage could have been allocated to various cadres, if a reserved vacancy in M.P. cadre is filled up by a general candidate. The applicants also say at the same time that no reserved vacancy is diverted to a general candidate, but also say that the insider reserved vacancy in M.P. cadre has been diverted to be filled up by insider general candidate. These are not reconcilable.

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9. However, as stated above, the general observations were in the nature of obiter dicta and it is for the applicants to have such reconsideration as they may deem fit in the context of the entire question.

10. In the light of the above, we are of the view that there is no need for review of the observations. The RA is accordingly rejected.



(T.N. BHAT)  
MEMBER (J)



(K. MUTHUKUMAR)  
MEMBER (A)