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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

D.A.No.69/90

New Delhi, this the 19th day of August, 1994.

HON'BLE SHRI J.P.SHARMA MEMBER (J)
HON'BLE SHRI P.T.THIRUVENGADAM MEMBER (A)

Shri R.S.Yadav, IPS
Assistant Superintendent of Police,
Hissar (Haryana) ..Applicant

(By Advocate Shri Abhishek Singhvi,
Sr. Advocate alongwith Ms. Shirin
Khajuria, Advocate, with Shri
Rajiv Sharma, Advocate).

Vs.

1. Union of India, through:
the Secretary to the Govt. of India,
Dept. of Personnel, Ministry of
Home Affairs, New Delhi.

2. State of Haryana through
the Chief Secretary to the
Govt. of Haryana, Chandigarh.

3. S.V.P.National Police Academy,
Hyderabad through its Director.

4. Shri Sudhir Chaudhry, IPS,
Probationer 1988 Batch, Director,
LBS National Academy of
Administration, Mussoorie.

C-4, C/14/252, Janakpuri,
New Delhi.

..Respondents.

(By Shri PH Ramchandani, Sr.
Standing Counsel).

ORDER

Hon'ble Sh.P.T.THIRUVENGADAM MEMBER (A)

The applicant took the Civil Services Main
Examination in the year 1987 and was selected for
the Indian Police Service. His rank in Indian
Police Service was 11th. One Shri Sudhir Choudhary
belonging to reserved community category scored
84th rank in Indian Police Service from the same
examination and was allotted to Haryana cadre as
an insider of home State against a reserved vacancy.
It is the case of the applicant that as a general
candidate he had the highest merit position for
consideration for allotment against insider quota.

The applicant's home State is Haryana but in the relevant year there was only one insider vacancy and this had been allotted to Shri Sudhir Choudhary as a reserved candidate. This O.A. has been filed praying for the following reliefs:-

- a) That this Tribunal may be pleased to strike down the order dated 5th June, 89 in so far as the same allots the applicant to the State of Gujarat and direct the Respondent No.1 to allocate the applicant to the State of Haryana.
- b) In the alternative, it is prayed that this Hon'ble Tribunal may be pleased to direct the Respondents to change the applicant's cadre from State of Gujarat to State of Haryana in view of the Office Memorandum Annexure-A3 according to which the applicant is entitled to be allocated to a place where his wife is serving.
- c) That during the pendency of this application in this Hon'ble Tribunal, a direction may be given to Respondents that it may permit the applicant to join the training alongwith the other IPS officers allocated to the State of Haryana so that in the event of this application being allowed, the applicant does not lose his seniority or experience compared to the other officers who have been allocated to the State of Haryana.

2. During the pendency of the proceedings, based on interim orders passed initially by the Chandigarh Bench of this Tribunal, later continued by this Bench, the applicant was given training and posting

in the State of Haryana and the allocation made for Gujarat was not given effect to.

3. One of the main grounds on which the O.A. has been filed, namely, there can be no allocation of cadre based on reservation, was not pressed by the learned counsel for the applicant in view of the orders of the Hon'ble Supreme Court in Civil Appeal No.3542 of 1992 filed by Union of India & Ors. Vs. Shri Rajiv Yadav, IAS decided on 27-1-1994. In this order the Hon'ble Supreme Court had upheld the principle of cadre allocation for reserved candidates.

4. Shri Abhishek Singhvi the learned counsel for the applicant argued that the principles of allocation even after allowing for reserved candidates have not been properly implemented and had there been a correct implementation, the applicant would have been allotted to Haryana as an insider candidate. The details of allocation made to IPS from the batch of 1984 (corresponding to the examination of 1983) were given as under:-

GENERAL & RESERVED CATEGORY 30-POINT ROSTER

BATCH-1984

	<u>Seat Reserved:- One</u>
1. Outsider (Reserved)	Permissible reservation: 0.9
2. Insider.	
3. Outsider	
4. Outsider.	

BATCH - 1985

Seat reserved:- One
Permissible reservation: 1.125

5. Insider (Reserved)
6. Outsider
7. Outsider
8. Insider
9. Outsider.

BATCH - 1986

Seat reserved:- One
Permissible reservation: 1.125

10. Outsider (Reserved)
11. Insider
12. Outsider
13. Outsider
14. Insider

BATCH - 1987

Seat reserved: One
Permissible reservation: 0.675

15. Outsider (Reserved)
16. Outsider.
17. Insider.

BATCH - 1988

Seat reserved: - One
Permissible reservation: 0.675

18. Outsider
19. Outsider.
20. Insider (Reserved)

NOTE:- Permissible reservation mentioned above has been computed by the applicant by applying a percentage of 22.5 over the actual number of candidates allotted a particular area.

5. It was argued that over the period from 1984 to 1988 there has been an excess allotment of 0.5 candidates.

6. However, it is the case of the respondents that the number of posts earmarked for the SC/ST candidates is worked out every year by taking into consideration 22 $\frac{1}{2}$ % of the total posts. By doing so the point five (.5) figure or more is rounded off to one (1) and the figures below point five (.5) is ignored. This results in slight excess of the candidates to the percentage of the reserved candidates to the total number of vacancies in certain cadres whereas in some other cadres the figure comes to less than point five (.5) and no reserved candidate is allocated for that cadre. Thus over a period of time the reserved percentage would get evened out. In the circumstances we find that slight deviations occurring at certain points of time with reference to the 22 $\frac{1}{2}$ % reservation cannot be held to be invalid.

7. Reliance was then placed on the office memorandum dated 3-4-86 issued by the Department of Personnel &

Training on the subject of posting of husband and wife at the same station. The applicant's wife is working as a Judicial Magistrate 1st Class in the State of Haryana. The spirit behind the guidelines issued in the office memorandum dated 3-4-86 is to ensure that the husband and wife live together as a family as far as possible. In the office memorandum the types of cases that may arise have been illustrated but it is also added that this list is not exhaustive and the government desires that in all other cases the cadre controlling authority should consider requests with utmost sympathy. The respondents have stated that as a matter of policy, inter cadre transfers are allowed only when two officers are of All India Services borne on different cadres and marry each other. Even while doing so, it is being ensured that the officer concerned does not get transferred to his/her home State. The case of the applicant for posting in the State of Haryana while his wife is in the State Judicial Service is not covered under the office memorandum and the applicant is not entitled to approach the Tribunal as there is no violation of the rule by not posting him to Haryana. We have gone through the guidelines and we are convinced that the applicant has no right for claiming allotment to Haryana.

8. The applicant has stated that against a general insider vacancy for the previous batch, namely 87 batch, one Sh. Rakesh Sarwal was allotted to Haryana but this candidate had not joined IPS since he had taken steps to further his prospects for joining

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the Indian Administrative Service. This vacancy should have been carried forward to the next year and the applicant allotted as an insider. The respondents in the reply have stated that Shri Rakesh Sarwal was appointed against the vacancy for an insider at the time of allotment of 1987 batch. If for some reasons the candidate had resigned, there is no provision for carrying forward and hence the question of considering the applicant against the additional vacancy of insider does not arise. In the recent order passed by Hon'ble Supreme Court in Union of India & Anr. Vs. Rahul Rasgotra & Anr. reported in 1994 (27) ATC 44 it has been held that there is no reason why the cadre allocation should be deferred if the candidate has joined the training. Accordingly, we hold that an allocation having been already made and with no provision for carry forward in case of the candidates not joining subsequently, this ground advanced by the applicant cannot be entertained. Finally, it was argued by the learned counsel for the applicant that in Civil Appeals No.3542/92 and 2184/93 (UOI and Ors. Vs. Shri Rajiv Yadav, IAS and Ors. and UOI & Ors. Vs. Anil Kumar, respectively) the Hon'ble Supreme Court had directed that the respective respondents may be allowed to be continued in the State cadres in which they have been allocated by interim orders even though the main ground regarding validity of the principles of allocation of cadre to reserved community candidates was not accepted. But these orders have been passed by the Hon'ble Supreme Court in the facts and circumstances of the case.

9. Having held that the principle of cadre allocation for reserved candidates is not illegal, we feel that we are not in a position to make any

exceptions. The Hon'ble Supreme Court in State of Punjab & Ors. Vs. Surinder Kumar & Ors. reported in 1992 (19) A.T.C 500 have clearly held that only decisions of questions on law are to be followed by the lower courts. Under the circumstances, this L.A. is dismissed. The parties will bear their own costs. However, this order will not be a bar on the applicant to make representation to the respondents for change of cadre. Interim order is vacated.

P. J. Thiru
(P.T. THIRUVENGADAM)
Member(A)
'M'

J. P. Sharma
(J.P. SHARMA)
Member(J)