

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No. 792/90

Date of Decision: 15.11.1998

Ajay Srivastava Petitioners
(By Advocate: Sh. N.Lal)

VERSUS

Union of India, Ministry of Respondents
Personnel, Public Grievances
and Pensions through its
Secretary & Others

(By Advocate: Sh. V.S.R.Krishna)

CORAM

Hon'ble Shri T.N.Bhat, Member (J)
Hon'ble Shri S.P.Biswas, Member (A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other
Benches of the Tribunal? *no*

[Signature]
(T. N. BHAT)
Member (J)

(28)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 792/90

New Delhi, this the 11th day of November, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)

HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

Ajay Srivastava
son of Shri Nanhe Lal, Advocate,
resident of 84, Alleganj,
Allahabad, I.A.S. of 1987 batch,
formerly posted as
Assistant Commissioner at Ukhrool in the office of
the Deputy Commissioner, Ukhrool, State of Manipur
at present posted as S.D.M., Nung Ba District Tamil Laang
State of Manipur.
(By Advocate: Sh. N.Lal) Applicant

Vs.

1. Union of India,
Ministry of Personnel, Public Grievances and Pensions
(Department of Personnel and Training)
New Delhi, through its Secretary.
2. State of U.P. through the Chief Secretary of
Government of Uttar Pradesh.
3. State of Manipur through the
Joint Cadre Authority at Imphal.
4. State of Maharashtra through the Chief Secretary
at Bombay.
5. State of Bihar through the Chief Secretary
at Patna.
6. Sri D. Sreenivasulu Allotted to Andhra Pradesh
7. Sri P. Kharkongar " Assam-Meghalaya
8. Sri Sudhir Kumar " Bihar
9. Sri S. Shivakumar " Bihar
10. Sri L. Chunago " Gujarat
11. Sri Autar Singh " Haryana
12. Sri Vijendra Kumar " Himachal Pradesh
13. Sri Santosh Kumar Sandhu " Jammu - Kashmir
14. Sri B. H. Anil Kumar " Karnataka
15. Sri M. Laxmi Narain " Karnataka
16. Sri T. K. Manoj Kumar " Kerala

29

17. Sri Rajendra Prasad Mandal " " Madhya Pradesh
 18. Sri Ajay Tirkey " " Madhya Pradesh
 19. Km. Sujata Cheema " " Maharashtra
 20. Sri Kishore Uttamran Gajbhiya " " Maharashtra
 21. Sri Sushil Kumar " " Manipur Tripura
 22. Sri Binod Kispotta " " Manipur Tripura
 23. Sri R. Binchilo Thong " " Nagaland
 24. Sri Rajesh Varma " " Orissa
 25. Sri K. Devanand " " Punjab
 26. Sri Prem Singh Mehra " " Rajasthan
 27. Sri K. Jayakumar " " Sikkim
 28. Sri Ashok Dongre " " Tamilnadu
 29. Sri Otemdai " " Tamilnadu
 30. Sri Vijai Kumar Dev " " Union Territories
 31. Sri Hemant Rao " " Uttar Pradesh
 32. Sri P. V. Jagamohan " " Uttar Pradesh
 33. Sri M. Mohanarao " " West Bengal
 34. Sri H. Ramulu " " West Bengal
 35. Sri Vijai Kumar Gautam " " Maharashtra
 Respondents 6 to 35, C/O Government of India,
 Resp. No.1.
 All other particulars of the respondents as required
 under (ii) to (vi) are in the know of the Government of
 India, the respondent No.1. It is requested to supply
 the same, if necessary.

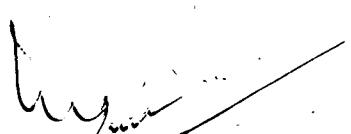
(By Advocate: Sh. V.S.R.Krishna)

.... Respondents

O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J)

The applicant appeared in the All India Services
 Examination in the year 1986 and was declarl successful. He
 was also placed 9th in the order of merit. According to the
 applicant his ranking in the IAS examination of 1986 for
 allotment to his Home State U.P. was 4th, the other three
 candidates being Sh. Arun Singh, Sh. Avinash K. Awasthi and
 Sh. Mahesh Kumar Gupta. The applicant had made a request for



being allotted to the U.P. cadre as an insider candidate. This request of the applicant has been rejected and aggrieved by the said action of the respondents the applicant has filed this OA. The applicant had made repeated representations and in this OA he has assailed the orders of the respondents passed on the applicants representations as aforesaid. According to the applicant the final allocation/allotment was made by the Government of India on 9.3.98 and communicated to the applicant at Mussorie where he was undergoing training in the Lal Bahadur Shastri Academy of Administration.

2. The main ground on which the applicant's allocation to a State other than his Home State is assailed in this OA is that according to his merit in the examination he stood 4th among the candidates whose Home State was U.P. and that in the year under reference four vacancies were available against insider quota and the applicant could have been easily accommodated. An additional plea taken by the applicant is that there had been a shortfall in the vacancies of insider quota of U.P. cadre in the previous two years and those vacancies should have been carried forward to the year 1987 and had that been done the applicant would get the necessary relief of allocation to his Home State.

3. The applicant has also taken the plea that although there is reservation for Scheduled Castes/Scheduled Tribes candidates in the initial recruitment to the All India Services there is no further reservation in the matter of allotment to their Home State. According to the applicant such a reservation is neither sanctioned by the Constitution of India nor by any other law or rule relating to allotment of cadre.

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4. The applicant prays for the relief of his allotment to his Home State of U.P. as an insider candidate and, in the alternative, for his allotment to the cadre of the State of Maharashtra after allotting one Sh. Vijay Kumar Gautam (Resp. No.35) to his Home State of Bihar.

5. The respondents have contested the claim of the applicant by filing a short reply to which they have annexed a copy of the counter filed by the respondents before the Allahabad Bench of the Tribunal in OA-167/89 which had been filed by the applicant himself claiming the same relief as he has claimed in the instant OA. The main plea taken by the respondents in their counter is that according to the continuous 30 point roster starting from 1983 examination the applicant could not find a place in the U.P. cadre as an insider candidate. As regards Sh. -Vijay Kumar Gautam, Resp. No.35, the respondents contend that he also could not get allocation to his Home State of Bihar as there were only three insider general vacancies and his rank was 4th among the candidates hailing from Bihar.

6. The respondents have further relied upon Regulation 9 of I.A.S. (Appointment by Competitive Examination) Regulations 1955 which provides for reservation for candidates belonging to SC/ST in direct recruitment to the I.A.S. and have contended that since the annual recruitment to the services is made on the basis of vacancies determined for each State cadre/Joint cadre the candidates recruited are to be allocated to the cadre depending upon the number of vacancies available in each cadre. According to the respondents unless reservation for SC/ST is made in each cadre

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while fixing cadrewise vacancies, it would not be possible to distribute the selected SC/ST candidates equitably among the different State cadres; and that if provision for their allocation as insiders is not made, the reserved category candidates would never be able to go to their Home States and would thus be deprived of their right to be allocated to their Home States as insider candidates.

7. The respondents have also denied the contention of the applicant that in case of shortfall the vacancies in the insider quota are required to be carried forward to the subsequent years of recruitment.

8. The applicant has filed rejoinder to the counter filed by the respondents in which the applicant has reiterated his contentions made in the OA.

9. We have heard the learned counsel for the parties at some length and have also perused the material on record. We find that there has been an attempt on the part of the applicant's counsel to unnecessarily burden the record with voluminous written submissions, though the question in controversy is a very short one. Even so, we have considered the written submissions as also the oral submissions made by the learned counsel for the applicant, who also happens to be the father of the applicant. We have also considered the arguments of the learned counsel for the respondents.

10. The main reliance of the learned counsel for the respondents is upon two judgments of the Apex Court, namely, Union of India Vs. Mhathung Kithan and Others, reported in JT 1996 (8) SC 499 and Union of India and Others

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vs. Sh. Rajeev Yadav, IAS and Others, reported in JT 1994 (5) SC 54. In *Mhathung Kithan* (supra) it was held by the Apex Court that there is no rule providing for a carry forward of insider vacancies if they are not filled up in a particular year. It has further been held that the policy decision of the Government dated 30.7.1984 was binding on the question of cadre allocation and should not be disturbed while implementing the policy as per the 30 point roster. According to the said policy decision at least 66.2/3% of the officers directly recruited should be outsiders. It has also been held, relying upon the earlier judgment in *Rajeev Yadav* (supra), that a selected candidate has no right to be considered for allocation to a cadre of his choice or to his Home State and that allotment of cadre is an incidence of service and a Member of an All India Service bears liability to serve in any part of India.

11. In *Rajeev Yadav* (supra) a three Judge Bench of the Apex Court held that since allocation of the Members of IAS to various cadres is within the powers of the Central Government, which powers are to be exercised in consultation with the State Governments concerned, and an officer can be transferred from one cadre to other, a selected officer cannot claim allocation to a particular cadre. In this judgment reference has further been made to a letter dated 31.5.1985 and it has been held that the aforesaid letter contained a policy decision of the Government in regard to the reservation of insider vacancies for the candidates belonging to the SC/ST category which policy decision of the Government has binding force even though the said letter was not notified.

By Mr.

12. More importantly, the Hon'ble Supreme Court held in Rajeev Yadav (supra) that allotment of Home State to SC/ST officers of IAS under Rule 5 of the IAS (Cadre) Rules does not amount to reservation of posts and therefore it does not hit Article 16 (4) of the Constitution of India.

13. Being confronted with the aforesaid judgments of the Apex Court which cover the main points raised in this OA the learned counsel for the applicant sought to make out that both the judgments were against the Larger Bench judgment of the Apex Court in Indira Sawhney vs. Union of India (AIR 1993 SC 477) and argued that the aforesaid later judgments should not be relied upon by this Tribunal. The learned counsel for the applicant laid much emphasis on the point that the majority of the Judges constituting the Bench in Indira Sawhney case had expressed the view that the larger concept of reservations takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions like exemptions, concessions and relaxations and that once special treatment like reservation at the time of initial recruitment was given to a reserved category candidate no further classification or special treatment like reservation in promotion is permissible in his favour from or outside of Clause (4) of Article 16 of the Constitution. He accordingly argues that once reservation at the time of appointment to I.A.S. is given to the candidates belonging to the reserved categories no further concession or special treatment can be given in the nature of reservation in allocation to their Home States as insider candidates.

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14. We notice that a similar contention had been raised before the three-Judge Bench of the Apex Court in *Rajeev Yadav (supra)* and the Bench repelled the contention and held that the principles of allocation as contained in the letter dated 31.5.1985 *ibid*, wherein preference is given to Scheduled Castes/Scheduled Tribes candidates in allocation to Home States do not amount to reservation of appointments or posts and as such the quest of testing the said principles on the anvil of Article 16 (4) of the Constitution of India does not arise. It was further held that SC/ST candidates are normally much below in the merit list and are as such not in a position to compete with the general category candidates and that the roster system ensures equitable treatment to both the general candidates and the reserved categories. The following observations in the judgment may be quoted with to bring home the point:-

"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 SC/ST candidates to be allocated to their Home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates among all the cadres."

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15. In view of the above clear pronouncement there is no scope for once again raising the question in this OA as to whether the preference given to a SC candidate in the matter of allocation to the Home State can be considered to be reservation under Article 16 (4) of the Constitution. It is one thing to say that a Bench of the Apex Court has not noticed an earlier judgment on this particular point but it is an entirely different proposition to say that even if the principle enunciated in the earlier judgment has been noticed and the relevant rule or provision has been interpreted by the Subsequent Bench such judgment of the Subsequent Bench is or is not binding upon the Subordinate Courts including this Tribunal. As already stated the principle enunciated in Indira Sawhney (supra) was very much in the mind of the Hon'ble Judges constituting the Bench in Rajeev Yadav (supra) and it was held that giving a preference to reserved category candidates in allocation to their Home State as insider candidates could not be held to be a reservation in terms of Article 16(4) of the Constitution of India and, therefore, any rule providing for such preference under the roster system cannot be held to be ultra vires of the Constitution. We are, therefore, not inclined to accept the contention of the learned counsel for the applicant that in view of the principles enunciated in Indira Swamy case the judgment in Rajeev Yadav (supra) cannot be held to be good law.

16. It is common ground that in pursuance to a policy laid down by the Government some time in the year 1984 a continuous 30 point roster was provided starting from the examination held in 1983. The roster follows the cycle:-

"Outsider, insider, outsider, insider, outsider"

by [initials]