

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA No.1833/91

Date of decision:- 15th Oct. 1992
" " "

Sh. Anil Kumar ... Applicant

versus

Union of India through
Secretary,
Ministry of Personnel,
Public Grievances and
Pension & ors. ... Respondents

CORAM: THE HON'BLE SH.T.S.OBEROI, MEMBER(J)
THE HON'BLE SH.P.C.JAIN, MEMBER(A)

For the Applicant ... Sh.A.K.Bhera,
Counsel.

For the Respondents ... Sh.P.H.Ramchandani,
Counsel.

1. Whether local reporters may be allowed to see the judgement? *Yes*.
2. To be referred to the reporter or not? *Yes*.

JUDGEMENT

(DELIVERED BY HON'BLE SH.T.S.OBEROI, MEMBER(J))

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, an IAS probationer, allocated to Assam-Meghalaya cadre, as per Government of India Notification dated 28th September, 1989, has prayed for his allocation to his home State i.e. Uttar Pradesh, on the basis of the 5th rank that he attained in the Civil Services Examination, 1988. The reliefs claimed by him in the present OA are as under:-

" (i) to strike down the impugned notification at Annexure-A1 to the extent that the same allocates, the applicant to the joint cadre of Assam-Meghalaya.

(ii) direct the respondents to allocate the applicant to the IAS cadre of Uttar Pradesh with all consequential benefits.

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(iii) direct the respondents to pay the cost of the legal proceedings to the applicant.

(iv) pass any other order or direction which this honourable Tribunal thinks fit and proper, in the circumstances of the case."

2. By way of interim relief, after hearing both the sides, as per detailed order dated 16th August, 1991, another Bench of this Tribunal, directed the respondents to post the applicant provisionally, in the IAS cadre of Uttar Pradesh, further directing that the interim order shall be subject to the outcome of the OA. Para 7 of the said order may be reproduced, as under:-

"7. For the grant of interim relief, the applicant has made out a prima-facie case in as much as he stated that he stood much higher in rank, i.e., 5th in All India merit list than the SC candidate who has been given his vacancy of insider in U.P. State for which he has given his option. The said policy of giving reservation first in the service itself and then in the allocation of cadre is not approved according to the judicial pronouncements as they stand today. So until the matter is finally adjudicated, it shall be harsh to the applicant to make him join on the basis of allocation of cadre in the State of Assam and Meghalaya."

3. In the counter filed on behalf of the respondents, the applicant's case has been opposed, primarily on the ground that Government, after keeping in view the various considerations such as the question of national integration, have formulated a particular policy, which should not be interfered with, by this Tribunal, as otherwise, it is likely to create difficulties,

in the smooth working of the scheme, and also upset the allocations in the allotment of IAS officers to various States.

4. No rejoinder has been filed on behalf of the applicant.

5. We have heard the arguments on behalf of both the sides.

6. The learned counsel for the applicant by referring A.T.R 1990(2) C.A.T.414(Ravneet Kaur,(Miss)IAS Probationer vs.Union of India and ors.) pleaded that the question involved in the case under citation was exactly the same, as involved in the present case, and the Chandigarh Bench of this Tribunal,while allowing the OA directed the applicant to be posted to the Punjab IAS cadre. An S.L.P filed by the respondents against the judgement of the Chandigarh Bench, has since been dismissed. The learned counsel for the applicant further pleaded that similar question also cropped up in another case in OA No.2557/90 dealt with by the Principal Bench, in which, there was a difference of opinion between the two Hon'ble Members,comprising the Bench, and as such, it was referred to a Larger Bench. The Full Bench, in its judgement reported in (1992) 19 ATC 455(FB) (Rajiv Yadav, IAS (Probationer) versus Union of India & ors.) confirmed the view,taken up in the case decided by the Chandigarh Bench,referrerred to earlier. Stay of the operation of the judgement had,however, been granted by the Supreme Court in this case. The learned counsel for the applicant thus pleaded that the S.L.P in the case ibid decided by the

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Chandigarh Bench having been dismissed and only "stay" granted in the Full Bench decision, there is no impediment in adopting the view of the decision in the case of Chandigarh Bench. In this connection, the learned counsel for the applicant referred to the view taken up by another Bench of the Principal Bench, in the case reported in 1990(2) S.L.J.(CAT) 593 (Dr. Ashok Kumar Vs. U.O.I & Ors. Vs. U.O.I & Ors.) (relevant para 4) holding that:

" On behalf of the respondents it was submitted that a Special Leave Petition has been filed before the Supreme Court against the decision in Premnath K. Sharma's case, which has been admitted and a stay of the order has been allowed, and hence the principle laid down in that decision cannot be followed at this stage. We are unable to agree. By the order in Premnath K. Sharma's case, it was held that the enquiry is vitiated and the order imposing the penalty of removal from service is vitiated and the order imposing the penalty of removal from service must be quashed and on that basis the application was allowed to that extent. The effect of the stay would only mean that respondents are not bound to implement the order. It cannot be said that the proposition that has been laid down therein by the Full Bench can be overlooked by a Division Bench of this Tribunal, and a different view can be taken."

Later, the above view was confirmed in a Full Bench judgement, Ganga Ram & ors. Vs. U.O.I & ors. reported in Judgements of the Central Administrative Tribunals (1989-91) page 441, on the point that an interim order in S.L.P. shall not be binding in subsequent cases.

7. The learned counsel for the respondents, while meeting the above point pleaded that the stay of the operation of the judgement, delivered by Full Bench in the case of Rajiv Yadav Vs. U.O.I. (supra) means as if there is no judgement any

longer, and after stay by Supreme Court, Tribunal has not decided any other case, on this point, and so, the interim order passed by this Tribunal on 16.8.91, in the present case, deserves to be vacated, in order to avoid complications in the functioning of the scheme, in question.

8. We have given our careful consideration to the rival contentions, as briefly discussed above. We have also perused the various citations referred to by the learned counsel for the applicant, in support of his contentions. In the case of Ravneet Kaur(Miss) Vs.Union of India & Ors.(supra), the S.L.P. filed by the respondents has since been dismissed. A perusal of the facts and circumstances of that case discloses that the same are identical to those involved in the present case. Even if there is a stay granted by the Hon'ble Supreme Court in the later case of Rajiv Yadav(supra), the stay so granted, in the light of the Full Bench decision of this Tribunal, in the case of Ganga Ram & ors.Vs.Union of India & ors.(supra), will not serve as an impediment to proceed further, specially in view of the S.L.P.dismissed in the case of Ravneet Kaur Vs.U.O.I. In sum, we find merit in applicant's case, allow the OA to the extent that the stay earlier granted on 16.8.91 is made absolute, subject to final decision of the case by the Supreme Court, in Rajiv Yadav Vs.U.O.I(supra). No costs.

(Signature)
(P.C.JAIN)
MEMBER(A)

(Signature)
(T.S.OBEROI)
MEMBER(J)