

9

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.3081/1991

New Delhi, this 9<sup>th</sup> day of May, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)  
Hon'ble Shri S.P. Biswas, Member(A)

Sanjay Kundu, s/o Shri C.L. Kundu  
F-2, University Campus  
Kurukshetra, Haryana

.. Applicant

(By Advocate Shri A.K. Behera)

versus

Union of India, through

1. Secretary  
Ministry of Home Affairs  
North Block, New Delhi
2. Secretary  
Ministry of Personnel, Public Grievances & Pensions  
North Block, New Delhi
3. Chief Secretary  
State of Himachal Pradesh  
Shimla
4. Chief Secretary  
State of Haryana, Chandigarh .. Respondents

(By Advocate Shri Rajeev Sharma)

ORDER

Hon'ble Shri S.P. Biswas

The applicant, an IPS (Probationer), is aggrieved by order dated 6.8.90 (Annexure A-1) by which he has been allotted to State of Himachal Pradesh as an 'outsider' candidate. The applicant alleges that the above order is arbitrary and legally unsustainable. Consequently, he has prayed for quashing the impugned order of cadre allocation and seeks issuance of direction to the respondents to assign him Haryana cadre with all consequential benefits.

2. As argued strenuously by Shri A.K. Behera, learned counsel, the applicant deserves allocation to the State

of Haryana on the basis of the following.

(i) The vacancies to be filled up in each state cadre are distributed between those to be filled up by 'insiders' and 'outsiders' in the ratio of 1 : 2 on the basis of a continuing 30-point roster maintained for the purpose of Civil Services Examination, 1983. It is from this year that 'insider' and 'outsider' ratio was revised to 1 : 2; The roster started with 'O' (outsider) for each state, each cycle being 'O', 'I', 'O'. Further all 'insider' vacancies are to be filled up strictly on the basis of merit. This principle of filling up all the 'insider' and 'outsider' vacancies on the basis of merit and merit alone has been clearly laid down by a decision of this Tribunal in the case of Ms. Ravneet Kaur Vs. UOI in OA 42/89 decided on 10.8.90.

(ii) Based on the above principle of cadre allocation, as well as rules/regulations/judicial pronouncements on the subject, the applicant is entitled to be allocated to State of Haryana as an 'insider', having secured first position amongst IPS probationers who had succeeded on the basis of Civil Services Examination/1988 and who belong to State of Haryana.

(iii) If the roster had started with outsiders 'O' for Haryana in 1985, each cycle being 'O', 'I', 'O' then an insider general vacancy would have fallen vacant in 1989.

3. The main plank of applicant's claim is that the 'insider' vacancy caused by the resignation of Shri Sarwal in 1988 was to be filled up in 1989 on the basis of the results of Civil Services Exam of 1988. Respondents' action not to fill up the post in the subsequent year i.e. 1989 was arbitrary. In other words, there was one back-log 'insider' vacancy available to be filled up in the year 1989 owing to resignation of 'insider' IPS officer in 1988. Against the said vacancy the applicant could have been adjusted as an 'insider' having been among those allocated to cadre of Haryana, argued the counsel for the applicant. Had the vacancy been filled up in accordance with 30-point roster on the principle of cadre allocation,

11

the applicant would have been allocated to state of Haryana as an 'insider' since the total number of vacancies in 1989 would have been three (3) in that case.

The counsel argued that the respondents have erred in calculating the vacancy position of IPS officers for the State of Haryana in the year 1989.

4. The learned counsel for the applicant also drew our attention to special dispensations allowed in respect of cadre allotment in several cases as mentioned hereunder;

In the case of U.O.I. & Ors. Vs. Rajiv Yadav (1994(6) SCC 38), the Supreme Court despite reversing Tribunal's judgement (in OA 2557/90 dated 19.12.91 : 1992(19) ATC 455) directed that although the applicant therein was allotted to the Manipur-Tripura cadre, but since he was working and had taken district training in UT cadre in Hindi language as per Apex Court's order, the respondents were directed to treat Rajiv Yadav as having been allocated to UT cadre. Simillar benefits were given by the Apex Court to Respondent No.1 in the case of UOI & Anr. Vs. Anju Gupta (Mrs.) IPS(S) & Ors. in CA No.3543/92 decided on 21.7.94. In this case Ms. Anju Gupta though allotted Himachal Pradesh cadre but by an interim order of this Tribunal was serving in the State Government of Uttar Pradesh and the Hon'ble Supreme Court directed to treat her as having been allotted to the cadre of Uttar Pradesh. Again, the

g

18

Hon'ble Supreme Court took similar views in the cases of UOI & Ors. Vs. Anil Kumar (1994 28 ATC 238) and Supriya Saha (Miss) Vs. UOI & Ors. (1994 28 ATC 239). The counsel submitted that in the light of the above decisions, the applicant herein also deserves similar consideration.

5. The respondents have opposed the claim. As there was no insider vacancy available in Haryana, the question of allocating the applicant or anyone belonging to Haryana does not arise. In support of their contention, respondents have annexed R-1 Chart indicating details of cadre allocation of IPS in 1988. According to 30-point roster, both vacancies went to 'outsiders'. Since 22.5% of 2 comes to 0.45, i.e. less than 0.50, it was ignored. Thus, there was no reserved vacancy in the IPS cadre of Haryana to be filled on the basis of CSE/1988.

6. Heard counsel for both the parties. We find the roster has been framed bearing in mind the requirement of increasing outsiders in the quota of Direct Recruits. Under Rule 5 of the Cadre Rules it is provided that:

"5. Allocation of members to various cadres

"5(1). The allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned.

"5(2). The Central Government may, with the concurrence of the State Governments concerned transfer a cadre officer from one cadre to another cadre".

8

The above Rule was construed by the Hon'ble Supreme Court in the case of UOI & Ors. V. Rajiv Yadav (supra), it was held that a selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home State. 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. Government of India, Department of Personnel & Training decided in a policy decision in 1984 that for various reasons as set out in the said policy that to have a proper balance in the State Cadre, the 'outsider' element in the direct recruitment was needed to be raised to 66.2/3% or in the ratio 2 : 1 as between outsiders and insiders in place of 1 : 1. The policy direction, conveyed to the Chief Secretaries of all States vide letter dated 30.7.84 stipulated as under:

"It is proposed to give effect to this decision by ensuring henceforth at the time of allocating candidates appointed to IAS and IPS on the basis of Civil Services Examination, that atleast 66.2/3% of the officers are from outsider the State concerned".

7. In the background of aforementioned policy, a continuous 30-point roster was provided starting from the examination held in 1983. The roster follows the cycle 'outsider', 'insider', 'outsider', 'outsider', 'insider', 'outsider'.....In any given year the roster starts with the point where the roster ended in the previous year. It is the claim of the applicant that against the batch of 1988, an insider vacancy arose because of resignation of an insider in that year and he should have been considered for one of the roster points

£

14

available for the batch of 1988. The question of carry forward of such vacancies was examined by the apex court in the case of UOI Vs. Mhathung Kithan & Ors. (1996 (8) JT 499) and it was held that in the absence of any such rule for carry-forward of insider vacancies, applicant's request therein for accommodating against the vacancy earmarked for 'outsider' as per roster point could not be considered. In the aforesaid case, the Apex Court also held that it was not possible to accept the contention of the petitioner therein regarding carry forward of 'insider' vacancy, there being no provision/rule laid down in that respect. The policy requires that atleast 66.2/3% of the officers who are directly recruited are from outside the State concerned. The apex court did not consider it appropriate in disturbing the implementation of the policy as per law. The case of Mr. M. Kithan (supra) is squarely applicable to the facts and circumstances of the present case.

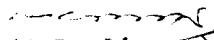
8. We may also mention that the Apex Court has authority under Article 142 of the Constitution to grant relief in deserving cases and that power is available to them only.

9. In the result, the application fails on merits and is accordingly dismissed. This will not, however, debar the respondents to consider applicant's representation sympathetically in the light of several cases decided by

2

15

the Apex Court as quoted herein above under para 4. In the circumstances of the case, there shall be no order as to costs.

  
(S.P. Biswas)  
Member(A)

  
(Dr. Jose P. Verghese)  
Vice-Chairman(J)

/gtv/