

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-1478/92

Date of decision: 31.7.1992

Shri Rahul Rasgotra Applicant

Versus

Union of India through Respondents
Secy., Ministry of Home
Affairs & Others

For the Applicant Shri M. Chandrasekharan,
Sr. Advocate with Shri A.K.
Behera and Shri Madhav Paniker,
Advocates.

For the Respondents Shri P.H. Ramchandani, Sr.
Advocate.

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed
to see the Judgment? *yes*

2. To be referred to the Reporters or not? *no*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The question raised in this application is whether
the tentative allocation of the applicant as Indian Police
Service Probationer to the Manipur-Tripura Cadre by the
impegned letter dated 28.12.1989 is to be treated as final
or whether the stage of allocation comes only when the
respondents appointed him as such w.e.f. 20.8.1990 under
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Rule 6 of the Indian Police Service (Recruitment) Rules, 1954. The learned counsel for the applicant submitted that this case is first of its kind, whereas the learned counsel for the respondents submitted that the matter is already concluded by the judgement dated 1.11.1991 in OA-1561/91 (Shri Ranveer Singh Krishnia Vs. Union of India & Others).

2. The dispute centres round the interpretation of the relevant rules and not on the bare facts of the case. The facts of the case in brief are that the applicant appeared in the Civil Services Examination, 1988 and secured 168th rank in the All India merit list. In view of this, he was allocated to the Indian Police Service. He did not, however, join the training along with the 1989 batch which comprised the successful candidates of the 1988 Examination. He was given permission to abstain from the prescribed training with a view to appearing in the 1989 Examination to improve his position. He appeared in the subsequent examination held in 1989 but did not make the grade. He, therefore, joined the Indian Police Service on 20.8.1990 on the basis of the results of the 1988 Examination. Thereafter, the respondents allocated him to the Manipur-Tripura Cadre in accordance with the tentative allocation made on 28.12.1989. In other words,

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on his appointment to the I.P.S. on probation under Rule 6 of the I.P.S. (Recruitment) Rules, 1954 by order dated 22.7.1991, the respondents did not undertake the exercise of allocating the applicant, taking the date of his joining as the relevant date for the purpose of allocation of his cadre.

3. The applicant contends that the cadre allocation in his case should be made strictly in accordance with the I.P.S. (Cadre) Rules, 1954 and other relevant statutory rules on the subject and not on the basis of the tentative allocation made by the respondents on 28.12.1989. If this is done, he has argued that he would be entitled to be allocated to the I.P.S. Cadre of Haryana having regard to the policy formulated by the respondents on cadre allocation. He has contended that the successful candidates can be allocated to the various State cadres only when they become "Cadre officers" after appointment in the I.P.S. He has submitted that on the basis of the results of the 1988 Examination, though 96 candidates were allocated to the I.P.S., only 53 of them became Cadre officers along with the 1989 batch. 30 candidates, including the applicant, joined the I.P.S. on 20.8.1990 and became Cadre officers along with the 1990 batch and 13 candidates who were allocated to the I.P.S., did not join at all. The respondents, however, made the cadre allocation of

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candidates on the basis of the results of the 1988 Examination and allocated all the 96 candidates to different cadres, irrespective of whether one is a Cadre Officer or not. The applicant has challenged this as being violative of the relevant rules and regulations inasmuch as even non-cadre officers were allocated to different State cadres. He has submitted that had the cadre allocation been made strictly according to the statutory rules and regulations, 30 candidates who became cadre officers in the I.P.S. along with the 1990 batch, could not have been allocated a cadre along with the candidates who became cadre officers along with 1989 batch.

4. The respondents have contended in their counter-affidavit that the cadre allocation of the 1989 batch probationers (including the applicant) was communicated to all concerned in December, 1989. In this context, they have referred to the communication dated 28.12.89 at Annexure A-1 to the application, which is the tentative allocation. The learned counsel for the applicant stated that he did not receive any such communication at the relevant time. The respondents have, therefore, argued that the application filed by the applicant is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. *Q*

5. The respondents have also contended that the applicant is not entitled to the relief sought by him even on the merits of the case. According to them, the applicant is an I.P.S. Officer of 1989 batch appointed to the Service on the basis of the 1988 Examination. Hence, he could not be allotted to a cadre along with 1990 batch officers appointed to the Service on the basis of the 1989 Examination. If he is allotted a cadre along with the 1990 batch officers, the cadre allocation of candidates appointed to the I.P.S. on the basis of the 1989 Examination (i.e., 1990 batch) would undergo a change and is open to challenge. The respondents have stated that the All India Services Act does not lay down the principles of cadre allocation. The principles of cadre allocation of direct recruits of All India Services are contained in the d.o. letter No. 13013/5/84-AIS (I) dated 31.5.1985. A copy of the principles of cadre allocation was laid on the Table of the Lok Sabha while replying to Unstarred Question No. 5685 on 4.9.1991. Copies of the said d.o. letter and the reply to the Starred Question have been annexed to the counter-affidavit.

6. The respondents have stated that a candidate finally allotted to the I.P.S. who has been granted permission to abstain from joining training has a legal right for appointment and hence a vacancy is required to

be reserved for him. In this context, they have relied upon the judgement of this Tribunal dated 20.8.1990 in OA-206/89 (Alok Kumar Vs. Union of India & Others), wherein it has been observed that the seniority of such a candidate should be determined along with his batchmates and not with probationers with whom he joined training. This view has been upheld by the Supreme Court in the case of Mohan Kumar Singhania & Others Vs. Union of India & Others, 1991 (2) SCALE 565. In view of this, they have contended that candidates finally allotted to the I.P.S., who had obtained permission to abstain from joining training as envisaged under Rule 4 of the Civil Services Examination Rules, are also required to be allotted a cadre along with their batchmates. They have relied upon the definition of the expression "Probationer" in Rule 2(e) and (ee) of the I.P.S. (Probation) Rules, 1954 which includes a candidate ~~xxx~~ who on being allocated to the I.P.S., has expressed his intention to appear at the next examination and has been permitted ~~xxx~~ to abstain from probationary training in order to so appear. They have also relied upon the judgement of this Tribunal dated 1.11.1991 in Ranveer Singh Krishna's case, referred to above.

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7. According to the respondents, in the instant case, vacancies in the I.P.S. were reserved for the applicant and other candidates similarly placed. Therefore, they retained the original year of allotment of 1989 and they were treated as I.P.S. Probationers within the meaning of I.P.S. (Probation) Rules, 1954. Hence, it was necessary to allot them cadres along with their batchmates.

8. We have gone through the records of the case carefully and have considered the rival contentions. What was under challenge in Alok Kumar's case, was the second proviso to Rule 4 of the Civil Services Examination Rules, 1986. The challenge was that the said proviso placed restrictions on the applicants to better their chances through subsequent Civil Services Examinations and requires them to resign from Service if they had succeeded in any previous examination and allotted any Service or were undergoing training. The Tribunal held in its judgement that the second proviso to Rule 4 was valid. This view has been upheld by the Supreme Court in Mohan Kumar Singhamia's case.

9. The validity of the proviso to Rule 4 of the Civil Services Examination Rules has not been raised in the present application. In our opinion, Ranveer Singh Krishna's case also is not relevant as the applicant in that case was aggrieved by the action of the respondents in allotting him

to the I.P.S. in the Union Territories Cadre, whereas he should have been allotted to the Rajasthan State Cadre. According to the tentative allocation contained in the letter dated 28.12.1989, Shri Krishna's name figures under the Union Territories Cadre, whereas the name of the applicant before us figures under the Cadre of Manipur-Tripura. There is, however, one basic difference between the issues involved in both the cases. In Krishna's case, another probationer who had been allocated to the Rajasthan Cadre of the I.P.S., had abstained from joining the service allotted to him to appear in the subsequent Civil Services Examination and he was finally selected for the I.A.S. on the basis of the subsequent examination and appointed to that Service in 1991, and had been allocated to West Bengal I.A.S. Cadre. Shri Krishna had claimed the consequential vacancy which had been created in the Rajasthan Cadre by one probationer having been appointed to the I.A.S. in the subsequent examination. The Tribunal did not find any merit in the claim made by Shri Krishna and observed as follows:-

"The applicant cannot claim the vacancy created in his parent State on the ground that it has fallen vacant because an officer of the same batch had been appointed to another Service in accordance with Rule 17 of the C.S.E. Rules. If this contention is accepted, the Cadre of the States will never stabilise but would remain in a perpetual state of flux as this would create a general reaction in several States."

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10. In the instant case, the factual situation is different from that of Alok Kumar's case and in Krishnia's case. The learned counsel for the applicant submitted that the applicant is not agitating about his seniority in the cadre in the present proceedings and that he is confining the relief only to his entitlement to allocation to the Cadre along with the 1990 batch of probationers and that he could not be allocated a Cadre along with the 1989 batch, as he had been given the permission to abstain from training in order to appear in the subsequent examination to improve his prospects and he became a member of the Service only with his appointment by order dated 22.7.1991.

11. Allocation of cadre officers to the various cadres is dealt with in Rule 5 of the I.P.S. (Cadre) Rules, 1954. Rule 5 (1) provides that the allocation of cadre officers to the various cadres shall be made by the Central Government in consultation with the State Government or State Governments concerned. Rule 8 of the said Rules stipulates that save otherwise provided in these rules, every cadre post shall be filled by a cadre officer. "Cadre Officer" has been defined in Rule 2(a) of the said Rules to mean a member of the Indian Police Service. When a person becomes a member of the I.P.S., is dealt with in the Indian Police Service (Recruitment) Rules, 1954 ('recruitment rules' for short). Rule 3 of the Recruitment Rules provides that

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the Indian Police Service shall consist of the following persons, namely, (a) members of the Indian Police; (b) members recruited to the Service before the commencement of these rules; and (c) persons recruited to the Service in accordance with the provisions of these rules. Rule 4 provides, inter alia, that recruitment to the Service shall be by the following methods, namely, (a) by a competitive examination; (aa) by selection of persons from Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union, and (b) by promotion of substantive members of a State Police Service.

12. It will be seen from the above that a person recruited to the Service by a competitive examination, will also be a member of the I.P.S. The expression 'direct recruit' has been defined in Rule 2 (aa) of the Recruitment Rules to mean a person appointed to the Service after recruitment under clause (a) of sub-rule (1) of Rule 4. (Emphasis supplied)

13. From a combined reading of the aforesaid rules, it would be clear that a cadre post cannot be filled up by an officer unless he becomes a member of the Service or he is appointed to the Service. In the case of the applicant, the tentative allocation made by the respondents in 1989, does not tantamount to appointment to the Service

in the Manipur-Tripura Cadre. The question of his allocation to a cadre would arise only on his appointment to the I.P.S. under Rule 6 of the Recruitment Rules and not from an anterior date. The right to allocation to a particular Cadre does not crystallise before appointment to the Service.

14. It may be that the respondents had been following a practice in the past, treating the tentative allocation as final allocation but that is not strictly in conformity with the Rules discussed above. The issue raised by the applicant is the first of its kind and has not been considered earlier. We also do not consider that granting of relief to the applicant would have any unsettling effect. The case of the applicant should be treated as one of its kind.

15. In the light of the foregoing discussion, we partly allow the application and dispose it of with the following orders and directions:-

(i) The respondents shall make the allocation of Cadre of the applicant afresh, treating his appointment to the Indian Police Service w.e.f. 20.8.1990 and not on the basis of the tentative allocation contained in the impugned letter dated 28.12.1989. His allocation should be made along with a

the 1990 batch of the I.P.S. Probationers and not with the 1989 batch.

(ii) We leave open the question of the seniority of the applicant in the I.P.S. as the same has not been raised in the present application. His seniority would, however, depend upon the relevant rules and regulations on the subject.

(iii) The respondents shall comply with the above directions as expeditiously as possible and preferably within a period of three months from the date of receipt of this order.

(iv) There will be no order as to costs.

B.N. Dholiyal
(B.N. Dholiyal) 31/7/92
Administrative Member

Partha
31/7/92
(P.K. Kartha)
Vice-Chairman (Judl.)