

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A.NO.1042/92

Hon'ble Shri A.V.Haridasan, Vice-Chairman(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 16th day of October, 1996

Biswajit Kumar Singh
aged about 30 years
working in the Indian Forest Service
(1989 batch)
presently undergoing Training at
Indira Gandhi National Forest Academy
Dehradun. ... Applicant

(By Shri S.S.Tiwari, Advocate)

Vs.

1. Union of India, through
the Secretary
Ministry of Environment
& Forests
Paryavaran Bhavan
C.G.O.Complex
Lodi Road
NEW DELHI. ... Respondent

(By Shri V.S.R.Krishna, Advocate)

ORDER

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant, Shri Biswajit Kumar Singh was selected for the Indian Forest Service on the basis of the 1988 Civil Services Examination held by the Union Public Service Commission. He is aggrieved, that though on the strength of his position in the merit list, he was entitled to be allotted to the IFS cadre of his own home State, Bihar, he has been instead allocated to the Jammu & Kashmir cadre of the service. He alleges that respondent has wrongly applied the reservation principle for SC/ST candidates in the matter of allocation of cadre and ignored the fact that another general candidate belonging to Bihar and placed above to him in the merit list had opted out of joining the service.

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2. When the application came up before the Tribunal on 20.4.1992, directions were issued to the respondents to provisionally transfer the applicant to Bihar cadre for purpose of training subject to the outcome of the OA. This Interim direction has continued to date and the applicant is still serving in Bihar.

3. As mentioned above, there are two ^{points} ~~points~~ of the case of the applicant. As regards the first, the vires of respondent's making reservations for Scheduled Caste/Scheduled Tribe candidates in the matter of cadre allotment came up before the Full Bench of this Tribunal in Rajeev Yadav Vs. Union of India & Others, AIR 1992(1) P-221 CAT. The Full Bench held that no such reservation could be made for the Scheduled Castes and Scheduled Tribes while allocating the members of IAS to various cadres. Against this Judgment, the Union of India went before the Supreme Court in Civil Appeal No.3542 of 1992. In its judgment dated 21.7.1994, a three judges Bench of the Supreme Court in Union of India & Others Vs. Shri Rajeev Yadav, IAS & Others (JT 1994(5) S.C. 54) allowed the appeal and set-aside the judgment of the Tribunal and dismissed the application filed by Shri Rajeev Yadav before the Tribunal. The proceedings in the present OA were also adjourned from time to time awaiting the decision of the Hon'ble Supreme Court in Rajeev Yadav's case, ~~was~~ considering it necessary for the proper

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disposal of the OA. After the Judgment of the Hon'ble Supreme Court was received, this OA was considered also along with similar other pending Applications to decide whether in view of the aforesaid judgment of the Apex Court, all such OAs could be disposed on the short ground that the applicants had no 'locus standi'. In its order dated 21.10.1994, the Tribunal held that though a person appointed to an All India Service has no right to be allocated to a State of his choice or his home State, yet, he has a limited right of being considered in accordance with law or the policy decision prevailing at the relevant time. It was also held that a Member of the All India Service will certainly be a person aggrieved if his complaint is that his allocation to a State cadre is not in accordance with the 'Roster System' introduced and adhered to by the Central Government. On that basis it was held that this OA, as others were maintainable and the applicant was entitled to a hearing on the merit of the case. The position thus is that ^{the} ~~which~~ the applicant can no longer ^{the} ~~question~~ the reservation for SC/ST in the allocation of cadre in the face of the Judgment of the Hon'ble Supreme Court in Union of India & Others Vs. Rajeev Yadav's case (Supra), the other ground taken by him namely, that the allocation of ^{the} ~~his~~ cadre has not been done in accordance with the existing guidelines and systems, remains to be examined.

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4. The allocation of the candidates appointed to the Indian Forest Service (IFS) as two other All India Services such as ^{i.e.} ~~namely~~, IAS^{and} IPS is being done since 1984 on the basis of what is known as the 'Roster System'. In this system, the vacancies in every cadre are earmarked 'Outsiders' quota and 'Insider' quota in the ratio 2 : 1. The applicant claims and it is not denied by the respondents that on the basis of this rule for the 1989 batch, to which the applicant belongs, vacancies for the Bihar cadre were to be filled by 3 'insiders' and 4 'outsiders'. Since applicant claims allocation to the Bihar cadre as an insider, we may ignore the four 'outsider' vacancies. It is an admitted fact that in the Union Public Service Commission list of successful candidates, the position of 'insiders' in so far as Bihar State was concerned was as follows:

Sr. No.	Name of the candidate/ officer with Bihar as Home State	Rank/ position
1.	Shri Jyoti Kalash	7
2.	Shri Madan Prasad Singh	11
3.	Shri Bishwajit Kumar Singh	13

There being three vacancies for 'insiders', the applicant first claimed that he was entitled to the third 'insider' vacancy but the respondents had wrongly allocated one Shri Shashikar Samanta, a Scheduled Tribe candidate with merit position (No. 84) as a third candidate following the policy of reservation. Alternatively, it was submitted

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that even if such reservation was to be allowed, the No.1 insider candidate namely, Jyoti Kalash had secured deferment of his appointment to the service and on being selected for the IAS in the subsequent examination, had joined that service. The applicant was therefore, the rightfully claimant of the consequential insider vacancy.

5. The respondents have submitted that the allocation of officers to various cadres was made taking into account the probationers available for such an allocation on the date ¹⁶ of orders of the competent authority were obtained in this matter. It is submitted that the final order of the Competent Authority in the matter of allocation of cadres was obtained on 21.12.1989 on which date, the said Jyoti Kalash had not opted out of the Indian Forest Service and there was thus nothing wrong in allocating Shri Jyoti Kalash to the Bihar cadre.

6. In a further affidavit filed on 16.7.1996, it was stated on behalf of the respondents in regard to the cadre allocation of Jyoti Kalash that:

- (i) Some of the candidates seek extension of one year to join the service on the ground that they would be appearing in the Civil Services Examination. Though they are granted extension, allocation of their cadres is not postponed as the allocation of cadres is required to be done together for all the candidates of a particular examination. All those candidates were declared successful by the UPSC excepting those who were found medically/physically unfit and those who specifically decline to join the service, are considered for the purposes

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of cadre allocation. Shri Jyoti Kalash obtained the one year extension to join the IFS. At no stage he informed the Cadre Controlling Authority (i.e. respondent) that he would not be joining the IFS.

- (ii) The applicant also obtained one year extension and joined the training at Indira Gandhi National Forest Academy, Dehradun after more than one year on 25.2.1991.
- (iii) The cadre allocation was decided by the competent authority on 21.12.1989. Shri Jyoti Kalash was adjusted against insiders vacancy in Bihar, where as the applicant was allocated to Jammu & Kashmir cadre.
- (iv) Once the cadre allocation is approved by the Competent Authority, no change whatsoever is effected therein as this would upset the entire process of allocation.
- (v) This practice is being followed consistently.

7. We have heard the learned counsel on both sides. Written arguments have also been submitted by the Senior Counsel for the applicant, and we have taken the same on record.

8. The main argument on behalf of the applicant is that Shri Jyoti Kalash having never joined the IFS and his appointment to that service having never been notified, there was no question of allocating him to Bihar State, and if the respondent did so, it was in violation of All India Services (Cadre) Rules, 1966. The learned counsel for the applicant has in this respect relied on Rule 5(1) of the IFS (Cadre) Rules, 1966 which states as follows:

"The allocation of cadre officers to the Forest cadre shall be made by the Central Government in consultation with the State Government concerned"

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It is urged by the learned counsel that when Shri Jyoti Kalash was not a member of the IFS his appointment not *having* been notified, the question of his allocation to any cadre under Rule 5(1) did not arise at all.

9. We are unable to agree with this contention. The Supreme Court has already held in Rahul Rasgotra's case (AIR 1995 SC 2237) that a candidate can be allotted to a particular cadre even before the issue of the notification. ~~Then~~ Their Lordships of Supreme Court have observed in para 10 and 12 of their Judgment:

Para 10: The various steps leading to the selection and appointment of a candidate to an All India Service like the Indian Police Service as a result of a combined competitive examination and allocation of the State Cadre to him are these namely, (i) competitive examination; (ii) selection in the competition and determination of his order of merit; (iii) allocation of the particular All India Service to him based on his position in the order of merit; and (iv) allocation of the State Cadre to him. It is, therefore, obvious that allocation of the State Cadre is made after the stage for allotting the particular All India Service like the Indian Police Service has been made, to the selected candidate. The object and purpose of cadre allocation to the selected candidate who has been allotted to a particular Service is merely to indicate the State Cadre to which he would belong in the service and it is not necessary for this purpose for him to actually join the training. The number of total vacancies in the service and those available in the State Cadres for a particular batch being known and so also the total number of candidates selected at the competitive examination with their comparative position in order of merit, nothing more is needed to perform the exercise of cadre allocation at that stage and no useful purpose is served by postponing that exercise to a later date. There is thus no reason why the cadre allocation is required to be deferred till a candidate has joined the training after being

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allotted the particular Service like the Indian Police Service on the basis of his comparative position in merit among the selected candidates. The only question, therefore, is: Whether the Indian Police Service (Cadre) Rules, 1954 forbid performance of this exercise before the officer has actually joined the training after being allotted to the Indian Police Service?

Para 12: "..... the exempted probationers are to be treated as probationers of the same batch along with all those selected at the same competitive examination and this has to be for all purposes including their cadre allocation which has reference to the available vacancies meant for officers selected at the same competitive examination and, therefore, to the corresponding cadre allocation for the entire batch of the same year, there being no method for intermixing of any probationer including the exempted probationer of two different batches for the purpose of cadre allocation. For a harmonious construction of all the relevant provisions, the meaning of 'cadre officer' in Rule 5(1) of the Indian Police Service (Cadre) Rules, 1954 must be so understood and construed and this also promotes the object and purpose of cadre allocation to be made thereunder. The explanation added in sub-rule (1) of Rule 5 retrospectively from 1.1.1988 is obviously to clarify this position which is implicit in the provisions even without the aid of this explanation."

10. We do not agree with the contention of the applicant's counsel that the present case is not covered by Rahul Rasgotra since in that case, ~~the~~ Rahul Rasgotra was an Indian Police Service (IPS) but the present applicant belongs to Indian Forest Service (IFS) which is ^{an} entirely separate service. Both, Indian Police Service and Indian Forest Service are All India Services, Rule 5(1) of the IPS (Cadre) Rules, 1954 is identical to that of Rule 5(1) of IFS (Cadre) Rules, 1966:

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

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IFS Rule 5(1): The allocation of cadre officer to the various cadres shall be made by the Central Government in consultation with the State Government concerned.

Thus, the ratio of Rahul Rasgotri's case applies squarely to the present case also.

11. The next argument advanced by the learned counsel is that the notification regarding allocation of cadres was issued on 26.11.1990 by which time, Shri Jyoti Kalash had already been offered the IAS as a result of Civil Services Examination, he took in 1989 (Batch 1990). In view of this, the cadre controlling authority should have taken the position as existing on the date of notification. We find no substance in this argument also. In a similar case, Subhash Chandra Vs. Union of India & Others, 1992(1) SLJ, CAT Madras 150 a Division Bench of this Tribunal (Madras Bench) while considering the case of the similarly placed Indian Foreash Service officers held that in case a senior could not join the service, no legal right accrues to the next 'insider' who could not get his home state. Similarly, in another case Ranveer Singh Krishnia Vs. Union of India & Others, 1992(1) SLJ Vol.43 558, an application made on the same ground by an IPS officer was rejected by the Division Bench of this Tribunal. In that case, the applicants had been allocated to the UT cadre of IPS. He claimed that another candidate who had

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been allotted to Rajasthan and was higher in the merit list, did not join the service and opted for appearing in the subsequent Civil Services Examination and on selection for the IAS was appointed to that service. On that ground, the applicant sought allocation to Rajasthan on the ground that the 'insider' who was higher to him in the merit list never joined the IPS. It was held by the Tribunal that when a candidate secures exemption from the joining service in the service allocated after obtaining the permission to appear in the subsequent examination the slot earned by him on the basis of the earlier examination had to be kept in the cadre in accordance with the Rule 4 of the Central Civil Services Examination Rules. In case he does not come up in the merit in the subsequent examination to get another service, he has the option to get back to the service allotted to him on the basis of previous year's examination. It was pointed out that this position has been upheld by the Tribunal in OA No. 206/89 and confirmed by the Hon'ble Supreme Court.

12. We are in respectful agreement with the views expressed by the Bench in OA No. 1561/91. The mere fact that Shri Jyoti Kalash had never joined the IFS cannot be taken as a ground for rearranging the allocations to various State Cadres. If the respondents have to make adjustments

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in the allocation of cadre consequent to a candidate succeeding in the subsequent examination to join the service of his choice, operation of the whole 'Roster System' would be disturbed and the same will have to be done all over again, leading to a chain reaction.

13. In the light of the above discussion, we conclude that there is no strength in this second limb of the case of the applicant that he has not been given proper allocation of cadre in terms of the operation of the 'Roster System' since respondents did not take into account the exit of Shri Jyoti Kalash a candidate belonging to Bihar who was higher to him in the merit list.

14. The counsel for the applicant has vehemently argued that in case the Bench does not favour the case of the applicant, it should sympathetically consider the retention of the applicant in the Bihar cadre, where he has been working for the last four years in compliance with the interim orders of this Tribunal. It has been urged that he has received training in Hindi and passed the relevant Departmental Examinations in Accounts and Procedure of Bihar State, the Land and Revenue Laws of Bihar and has gained experience of working in that State. Also his permanent absorption in the Bihar would not adversely affect any other candidate since he is deemed to be working against the vacancy of

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Shri Jyoti Kalash. It is also urged that if he is transferred to Jammu & Kashmir State, he has to pass local examinations and has to learn new languages like Urdu, Kashmiri and Dogri and suffer the hard-ship of working in senior scale without knowledge of the local conditions. In this connection, the learned counsel for the applicant has sought to rely on the orders of the Apex Court in Rajiv Yadav's case(Supra):

"Rajiv Yadav is IAS officer of 1989 batch. Although he was allocated to the Manipur-Tripura cadre, as a result of the orders of this Court, he is serving in the Union Territory cadre. He has also undergone district training in the Union Territory cadre in 'HINDI' language. In view of these facts, despite our reversing the Tribunal's judgment, we direct that Rajiv Yadav shall be treated to be allocated to the Union Territories cadre. This will, however, not debar the Central Government from transferring Rajiv Yadav from one cadre to another in terms of Rule 5(2) of the Cadre Rules on any justifiable ground arising after this judgment."

15. We do not consider that it would be proper or competent for us to give such a direction in this case. The interim direction for the training of the applicant was given when the Full Bench judgment in Rajiv Yadav's case had not been set-aside by the Apex Court. Under Article 142 of the Constitution of India, the Supreme Court has extensive powers to pass such orders as it may consider necessary for doing complete justice in any matter pending before it. So far as the Tribunal is concerned, as it deals with service matters, no relief outside the ambit of Rules

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can be granted once it has been concluded that the respondent acted squarely within the rules. We therefore, declines to consider the argument of the applicant's counsel that since he has been working ^{in Prison} for so many years under the protection of this Tribunal, the Tribunal must now ensure that the applicant does not suffer undue hardship as a result of such orders.

16. In the light of the above discussion and the facts and circumstances of the case, we dismiss the application. Interim order already in force, shall stand withdrawn. There shall be no order as to costs.

R. K. Ahluja
(R.K. AHUJA)
MEMBER(A)

A. V. Haridasan
(A.V. HARIDASAN)
VICE-CHAIRMAN(J)

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