

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1283/93
T.A. No.

199

DATE OF DECISION 14.1.1999

Abhay Kumar Prasad, IPSPetitioner

Shri M. Chandrasekharan, Sr.
Counsel with Sh. M.K. GuptaAdvocate for the
Petitioner(s)

VERSUS

Union of India & Anr.Respondent

Shri W.S.R. Krishna.Advocate for the
Respondents.

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri N. Sahu, 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.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1283/93

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New Delhi this the 14 th day of January, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri N. Sahu, Member(A).

Abhay Kumar Prasad, IPS,
S/o Shri Shiv Nandan Prasad,
203, PRDA Flats, Near Community Hall,
S.K. Puri, Patna-800001 (Bihar). Applicant.

By Advocates Shri M. Chandersekharan, Sr. Counsel with
Shri M.K. Gupta.

Versus

1. Union of India, through
the Secretary,
Department of Personnel & Training,
Government of India, N.Delhi.
2. Union Public Service Commission,
through its Secretary, UPSC,
Dholpur House, N.Delhi. Respondents.

By Advocate Shri V.S.R. Krishna.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who had appeared in the Civil Services Examination (CSE), 1990, is aggrieved by the decision of the respondents in allotting him the IPS cadre instead of IAS cadre. He also submits that he had made a representation on 12.11.1992 which he states has not been considered. Hence this O.A.

2. The relevant facts are that the applicant who belongs to the SC community, had qualified in the CSE 1990 and was placed at rank 708. 16 vacancies in the IAS cadre were reserved for the Scheduled Caste (SC) candidates to be filled on the basis of this Examination. According to the respondents, the applicant was placed at Serial No.18 among



the SC candidates. Out of the first 16 SC candidates, one person who had given higher preference for allotment to IFS, was given that cadre and so the applicant's position became 17th among the SC candidates for allotment to IAS as against the 16 vacancies. The first candidate among this list of 17, namely, one Shri Sudhir Prasad (rank 92) was provisional as there was some dispute about his claim that he belongs to the SC community. He had filed an O.A. before the Allahabad Bench of the Tribunal which had given an interim order on 5.1.1992 directing the respondents to admit him in training course at his own risk and responsibility and subject to the decision of the Tribunal. The Tribunal by order dated 3.2.1992 confirmed this order against which an SLP was filed in the Supreme Court which stayed the operation of the impugned judgement by its order dated 14.5.1992. Finally, the O.A. was disposed of by order dated 29.6.1992. The respondents have stated that on the basis of a report submitted by the District Magistrate, Aligarh that the candidate Shri Sudhir Prasad did not belong to the SC community, UPSC vide its order dated 28.8.1992 ultimately cancelled his candidature. It is stated that the Supreme Court has confirmed this order on 17.12.1992.

3. The respondents have submitted that the applicant who had secured 708th rank in the CSE, 1990 and got 18th position from among the SC candidates could not be allotted to IAS and he was allotted to IPS in accordance with his order of preference. He had attended foundational course w.e.f. 12.10.1992. His final allocation to IPS of Uttar Pradesh cadre was issued on 24.4.1992 (R-II). They have also stated that the allocation of 940 successful candidates in the CSE, 1990, had been tentatively allocated to various cadres

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and sent for training before the cancellation of Shri Sudhir Prasad's candidature on 28.8. 1992. In accordance with the M.H.A. O.M. dated 25.3.1970, the resulting SC vacancy was carried forward to the recruitment year to be filled by the CSE, 1992, as the vacancies for CSE, 1991 were already finalised before the cancellation was done on 28.8.1992. Accordingly, out of 80 vacancies for IAS in the CSE, 1992 examination, 13 SC vacancies were reserved though it would have been only 12 vacancies, i.e. 15% of 80 and notified (R-IV). They have also submitted that the applicant's father had made a number of representations on his behalf and through M.Ps and other VIPs since 1992 to which replies have been sent explaining the position, copies placed on record. They have stated that the tentative allocation of candidates to the various cadre of IAS was finalised in January, 1992. Shri V.S.R. Krishna, learned counsel, relying on the judgement of the Supreme Court in **Shankarsan Dash Vs. Union of India** (Civil Appeal No. 8613 of 1983) decided on 30.4.1991 has submitted that the process of selection had to be closed at some stage and this has been done. His contention is that it cannot be kept open for all times as it was not in the public interest, as it will disrupt allocation of cadres down the line in subsequent years. He has also submitted that since the applicant has already been allotted to IPS, there was no question of reallocating him to the IPS based on the results of the CSE, 1990 especially when the SC vacancy arising due to the cancellation of the candidature of Shri Sudhir Prasad has been carried forward to the next possible recruitment year i.e. CSE, 1992. Learned counsel has, therefore, submitted that the O.A. may be dismissed.

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4. Shri M. Chandersekharan, learned Sr. Counsel, has submitted that as per the respondents' own averments, the final allocation of IAS probationers of CSE 1990 was issued only by letter dated 16.2.1993. His contention is that before that date, the respondents have admittedly cancelled the candidature of Shri Sudhir Prasad on 28.8.1992 and, therefore, they should have considered the applicant who had secured 18th position in the list of SC candidates for allocation to IAS against the 16th vacancy which they have not done. Learned Sr. counsel for the applicant has relied on the judgement of the Supreme Court in **Jai Narain Ram Vs. State of U.P. & Ors.** (1996(1) SCC 332) and the judgement of the Tribunal in **K. Shivaji Vs. Union of India** (1998(38) ATC 155). His contention is that following the judgement in **Jai Narain Ram's case** (supra), since the applicant, who was a SC candidate, was available for allocation to the IAS cadre on the cancellation of the candidature of Shri Sudhir Prasad on 28.8.1992, the respondents should have considered allocating him to that cadre. He has also submitted that the respondents were also aware that Shri Sudhir Prasad who had earlier appeared as a general candidate had appeared in the 1990 CSE by giving a false Scheduled Caste Certificate and, therefore, there was no reason why they could not allocate IAS cadre to the applicant. He has also submitted that in **Shivaji's case** (supra), the Tribunal had directed the respondents to consider the representation made by the petitioner for allocating him to the State of Maharashtra as was done by them in the case of Shri Kurian, although liberty was also granted to the respondents to allocate the State of Orissa, if possible.

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...From the materials produced before us it is fully established that there has not been any arbitrariness whatsoever on the part of the respondent in filling up the vacancies in question or the other vacancies referred to by the learned counsel for the appellant. The process of final selection had to be closed at some stage as was actually done. A decision in this regard was accordingly taken and the process for further allotment to any vacancy arising later was closed...

(Emphasis added)

8. From a careful perusal of the totality of the facts and circumstances, records and aforesaid decision of the Supreme Court, we are unable to say that there has been any arbitrariness on the part of the respondents, to justify interference in this case. At the time of service allocation, the applicant being 18th among SC candidates and there were only 16 vacancies for this category, he was not entitled to be appointed in IAS cadre. Till the candidature of Shri Sudhir Prasad was cancelled as a SC candidate on 28.8.1992, it would not have been possible for the respondents to keep all the service allocations of the successful candidates of CSE, 1990 pending and accordingly they have done this in January, 1992. The applicant had been allotted to IPS and tentatively allocated to UP cadre and had also attended the foundational course from October, 1992. It is also relevant to note that his final allocation to this cadre was issued on 24.4.1992 and the subsequent vacancy arising out of the cancellation of Shri Sudhir Prasad's candidature has been carried forward for being filled by a SC candidate on the basis of the 1992 CSE. We cannot also ignore the facts stated by the respondents that as a result of CSE, 1990, the candidates had already been allotted and sent for foundational course for IAS and IPS in August-September, 1991 and the results of CSE 1991 was announced on 14.9.1992. Therefore, to quote the Hon'ble

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5. Shri V.S.R. Krishna, learned counsel, had controverted the above submissions stating that the respondents must have considered the applicant's case against the 16th SC vacancy for the CSE 1990 in 1992 and had undertaken to submit the relevant records. The copy of the relevant file, though submitted late, is placed on record. He has also submitted that in the light of the Constitution Bench judgement of the Supreme Court in **Shankaran Dash's case (supra)**, the other two judgements relied upon by the applicant's counsel referred to in paragraph 4 above would not help the applicant. He has submitted that the applicant has no indefeasible right for being allocated to the IAS cadre, especially when he has already joined the IPS cadre in November, 1992. He has submitted that the judgement of the Supreme Court in **Jai Narain Ram's case (supra)** is not relevant as that case deals with a situation where SC candidates selected in reserved posts did not join and the question was denial of appointment to an equal number of SC candidates, which is not the present situation as the respondents have carried forward the SC post to the next available recruitment year i.e. CSE, 1992. Learned counsel has also distinguished the case of **K. Shivaji** (supra) which he states is not a case dealing with the cadre allotment but deals with reallocation of the petitioner to a State under Rule 5 of the IAS Cadre Rules, 1954, which he, therefore, submits is not relevant in the present case.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. In **Shankarsan Dash's case (Supra)**, the Supreme Court has held as follows:

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Supreme Court observations in **Shankarsan Dash's case (supra)**, the applicant's allotment to IPS as per his rank and choice of service in accordance with the Examination Rules was already "closed".

9. From the records submitted by the respondents and the copies of the letters placed as annexures to their reply, it is seen that they have answered several representations made on behalf of the applicant from M.Ps and others explaining the position. The reserved vacancy which became available on the basis of CSE, 1990 after the candidature of Shri Sudhir Prasad was cancelled has also been carried forward to the next recruitment year in the reserved category. Therefore, taking into account the totality of the facts and circumstances of the case, the process of final selection of the applicant having been "closed" on the basis of CSE, 1990, it cannot be reopened "for further allotment to any vacancy arising later". The fact that final allocation to IAS cadre came on 16.2.1993 will not assist the applicant as his allotment has been "closed" by then and he had also done the foundational course for IPS. Any reopening of the cadres at this stage will indeed have a chain reaction in other services and will be contrary to the decision of the Constitution Bench judgement in **Shankaran Dash's case (supra)** that the final decision has to be closed at some stage in such matters. We are not impressed by the submissions made on behalf of the applicant that while others cannot come after nine years to ask for another cadre allotment, there is no bar in the case of the applicant being allotted to the IAS cadre even though his tentative allotment to the cadre has already been done in January, 1992. In **Jain Narain Ram's case (supra)**, the Supreme Court was dealing with the situation

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where the appellant who was a SC candidate had been denied selection in that category when other selected candidates had not joined the service wherein the Supreme Court had held that the State had failed to perform its constitutional duty to requisition the PSC to recommend the next qualified person to the post reserved for Scheduled Caste. That judgement is not relevant to the facts in the present case as the reserved post of CSE 1990 has been carried forward in favour of another Scheduled Caste for the next available recruitment year i.e. CSE, 1990. We have also seen the judgement of the Tribunal in **K. Shivaji's case (supra)** which deals with correction of a mistake in allocation of a candidate in IAS cadre to a State under Rule 5 of the IAS (Cadre Rules) of 1954 and not to the cadre allocation under the CSE Rules. In the present case, we are unable to say that the respondents have made a mistake which ought to be corrected in allocation of the applicant to IAS cadre instead of IPS cadre, as claimed by him, taking into account the facts and the judgement of the Supreme Court in **Shankaran Dash's case (supra)** which in our view is fully applicable. We are, therefore, of the view that the judgement in **K. Shivaji's case (supra)** will not assist the applicant in the present case. In the circumstances, we find that the decision of the respondents is neither arbitrary, unreasonable nor illegal to justify any interference in the matter.

10. In the result, we find no merit in this application and it is accordingly dismissed. No order as to costs.

K. Sahu

(N. Sahu)
Member (A)

SRD

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)