OA 1061/01

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 1st day of May, 2002.

Original Application No. 43 of 2001
with
Original Application No. 103 of 2001
with
Original Application No. 105 of 2001
with
Original Application No. 121 of 2001
with
Original Application No. 1061 of 2001
with
Original Application No. 1257 of 2001.

Q U O R U M :- Hon'ble Mr. C.S. Chadha, Member- A.
Hon'ble Mr. A.K. Bhatnagar, Member- J.

1. Amit Negi, I.A.S a/a 25 years, S/o Sri B.S. Negi
Presently posted as Joint Magistrate, Roorkee.

2. Jitendra Kumar a/a 32 years S/o Sri Jagdish Prasad,
working as District Magistrate, Firozabad.

3. C.K. Tiwari a/a 41 years, S/o Sri P.C Tiwari
Posted as Vice Chairman, Allahabad Development
Authority, Allahabad.

.....Applicants in OA 43/01,
O.A 103/01
and OA 105/01

Counsel for the applicants :- Sri Sudhir Agarwal
Sri S.K. Mishra

V E R S U S

1. Union of India through the Secretary,
Department of Personnel and Training, North Block,
Central Secretariat, New Delhi.

2. The Secretary (Home), M/o Home Affairs,
Govt. of India, New Delhi.

3. The State of Uttar Pradesh, through Secretary, appointment and Trg. Lucknow.

4. State of Uttaranchal, through the Secretary, (Karmik), Uttaranchal Government, Dehradun.

.....Respondents in O.A No. 43/01,
O.A No. 103/01
and O.A No. 105/01

Counsel for the respondents :- Sri R.C. Joshi
Sri Rajeev Sharma
Sri K.P. Singh
Sri R. Chaudhary

1. L.V. Antony Dev Kumar S/o Late S. Louis Victor R/o Jhansi posted as Commandant, 33 Bn. P.A.C, Jhansi.

2. Mahabir Prasad S/o Late Masuria Din R/o Vill. Sevendha, P.O. Shergarh, Distt. Kaushambi.

.....Applicants in O.A 121/01
and O.A 1061/01

Counsel for the applicants :- Sri Yogesh Agarwal

V E R S U S

1. Union of India through its Secretary, M/o Home Affairs, Govt. of India, New Delhi.

2. Secretary, Govt. of India, M/o Personnel Public Public Grievances and Pension, D/o Personnel and Training, North Block, Central Secretariate, New Delhi.

3. State of U.P. through the Principal Secretary, (Home), Lucknow, U.P.

4. Director General of Police (U.P.), Tilak Marg Lucknow- 226001.

5. A.D.G (Karmik), D.G Headquarters, Lucknow.

6. I.G. (Karmik), D.G Headquarters, Lucknow.

7. State of Uttaranchal through Principal Home Secretary.

.....Respondents In OA 121/01 and OA 1061/01

Counsel for the respondents :- Sri R.C. Joshi
Sri K.P. Singh

Ashok Kumar-I S/o Sri Ram Bhaj Agarwal
Presently posted in U.N. Mission in Kosovo

.....Applicant in OA 1257/01

Counsel for the applicant :- Sri Yogesh Agarwal
Sri Ajit Mani Tripathi

V E R S U S

1. Union of India through the Secretary, M/o Home Affairs, Govt. of India, New Delhi.

2. Secretary, M/o Personnel, Public Grievances and Pension, D/o Personnel and Training, North Block, Central Secretariat , New Delhi.

3. State of U.P. through the Principal Secretary (Home), Lucknow, U.P.

4. I.G. (Karmik), D.G.P Headquarters, Lucknow.

5. Advisory Committee constituted under the provisions of Section 76 of the U.P. Reorganisation Act, 2000 through its Chairman.

.....Respondents

Counsel for the respondents :- Sri J.N. Sharma
Sri K.P. Singh

O R D E R (Oral)

(By Hon'ble Mr. C.S. Chadha, Member- A.)

These six OAs,though filed by six different applicants, relate to the same matter and the cause of action and the remedy sought is identical. We are, therefore, disposing of all the six cases with a common

C.S. Chadha

order. These cases have been filed by I.A.S and I.P.S Officers, borne on the cadre of U.P, who are challenging the allocation of such All India Officers to the two States of U.P. and Uttaranchal after the reorganisation of the State of U.P.

2. The contention of the applicants is that the Cadre allocation has been made without disclosing the policy guidelines which the Govt. of India is supposed to have made and which are claimed to have been implemented without any favour. This is claimed to be necessary in view of the provisions contained in section 72 (4) of the U.P. State Re-organisation Act. The applicants have claimed relief on the main ground that in absence of the knowledge of the guidelines used and how they were implemented, they were unable to know whether the cadre allocation had been done in a fair and equitable manner as required under section 76 of the abovementioned Act.

3. In their arguments before us the learned counsels for the applicants have averred that without knowing the policy guidelines adopted they represented against the cadre allocation, but in case of I.A.S officers no finality has been given to the process, after the representations were considered by a special committee constituted for this purpose, and recommendations by it were sent to the Union Government for a final decision. However, for I.P.S Officers, the representations have been finally dealt with. It has been brought to our notice that in the case of L.V. Dev Kumar, I.P.S (RR-'94), a final decision has been taken, rejecting his representation vide annexure - 6 of the Suppl. Affidavit in the relevant case.

We find that no logical and specific reasons have been given for rejection of his representation and it cannot be termed as a speaking order. The said order dated 30.08.2001 merely states :-

> " The committee observed that Sri Dev Kumar has been allocated to Uttaranchal cadre strictly in accordance with the policy guidelines approved by the Central Government."

What those guidelines were and how they have been applied in the instant case, has not been mentioned in the said order. In order to bolster their decision against the applicant the said order goes on to add that being an employee belonging to an All India Service he is liable to serve anywhere in the country, and further that the grounds mentioned by him cannot be treated as being genuine grounds of hardship. Such an order, in very general terms, claiming that every thing has been done in a fair manner, cannot be considered to be a speaking order and, therefore, cannot be sustained in the eyes of law. The Union Government, which is protector of the interests of such senior All India Services Officers, cannot take shelter behind the simple statement that the allocation has been done in accordance with the approved guidelines, without first outlining the policy guidelines and then showing clearly how they were employed in each case. Perhaps, in their zealousness to finish the cadre allocation quickly before the new state of Uttaranchal came into existence everything was done in a hurried manner without the affected persons even knowing what yardsticks and formulas are going to be empolyed. It is very essential that on such an important issue the state employs the guidelines in a transparent manner, which does not seem to be the case.

4. The learned counsel for the applicants have averred that the ends of justice would be met if their representations are considered and disposed of by a reasoned speaking order within a reasonable and fixed period of time. However, they hastened to add that, they cannot be expected to file proper representations without first knowing the policy guidelines decided by the Union Government before setting about to make the cadre allocation. In order to be fair to them, and all concerned, it is essential that the Union Govt. and the two states, in as much as they have been involved in the process of finalisation of the said guidelines, should be directed by us to announce the used policy guidelines clearly, before the applicants can make representations. The learned counsels for the respondents brought to our notice that such guidelines had been mentioned in quite detail in para 3.9 of the CA filed in O.A No. 105/2001, C.K. Tewari Vs. U.O.I and others. On going through the said guidelines we found that only certain broad principles have been spelt out, but the total policy is not clear from the said averments in that para. To be able to understand that the whole process of cadre allocation has been done in a fair manner, it is necessary to know how the adopted guidelines made blocks of a certain number of officers, and which serial numbers in each such block were chosen to be borne on the cadre of Uttaranchal, and which serial numbers remained back in U.P., how the allocation of SC/ST candidates was done and in what proportion, what were the different criteria used for allocation of the so called 'insiders' and the 'outsiders' and the allocation of 'spouses' both of whom are members of All India Services.

5. The right way of going about it would have been to first make such guidelines, keeping in mind the principles laid down and enshrined in the Constitution as well as the Reorganisation Act. After making such guidelines the same should have been announced and a provisional list made showing how the guidelines were employed in each case. Only thereafter could representations be called and the list finalised. The stage of making guidelines in accordance with various laws is long over and perhaps the Union Govt. will not like to go back to that stage and it can be only a fervent wish that the guidelines made, did not violate any such laws. However, the Govt. must start afresh from the second stage to ensure fairness and transperency. For, it is not sufficient to do justice but it is necessary to ensure that justice appears to have been done. In the absence of announcing the policy guidelines before applying them, justice does not seem to have been done.

6. Therefore, in the circumstances of the case, we feel that the ends of justice will be served if the O.A is disposed of with directions to the respondents to carry out the whole process afresh in line with the discussion above. To be specific, the Union Govt. and the two states involved must announce the policy guidelines in great detail as discussed above including the making of blocks and allocation of certain serial numbers to each unit. This must be done within a period of two months from the date of communication of this order. Thereafter, a provisional list must be made giving exactly how each officer has been treated, inviting objections/ representations in another two months and the representations so received should be disposed of by a reasoned speaking order in each case; the finalisation should be done in

K.S.Chatle

another ten months at the most, i.e., the whole process of receiving and finalisation of the representations must be completed not leter then 12 months from the announcement of the policy guidelines and the provisional allocation.

7. The learned counsel for the State of Uttaranchal expressed a deep sense of anguish on behalf of his state owing to this delay in finalisation of the cadre allocation and the consequent shortage of officers of All India Services in that unit. He requested us to issue directions to the respondents to allow those officers of U.P., who willingly volunteer to go to Uttaranchal, to immediately join in Uttaranchal. He further averred that his state was making efforts to borrow such officers from other sates of the Union of India, who were willing to come to Uttaranchal and this should be allowed. We are afraid that cadre management is beyond our purview and neither any such directions are a subject matter of the present O.As. We are afraid we cannot direct the Union or the States involved, how to manage the present crisis. We can only recommend to the U.O.I to consider the requests of the State of Uttaranchal, and take necessary decissions, making it quite clear that our recommendations in this regard do not carry any force of law.

8. Another averment made before us by the learned counsels for the applicants is that certain senior officers of the two States earlier involved in the process of finalisation of cadre allocation should not be involved in the new process of deciding the representations as they were interested parties, because some of their close relatives were affected parties. We would hesitate in giving any such directions as we are confident that in view of the specific allegations made, the Union Govt. will,

on its own, ensure that senior officers of the two states, who may have had some vested interests, would not be kept in the committees finalising the representations.

9. A request has been made by the counsel for the respondents that till the new process of finalisation of cadres is completed, status quo must be maintained. We agree and, therefore, direct that only regarding the applicants who have approached us,and none other, the status quo must be maintained till the finalisation of the cadre allocation.

10. We realise that in view of the directions given above some of those who are happy with their present cadre allocations, may have to be disturbed if our directions are carried out and they may argue that they cannot be adversely affected by our orders without hearing them and that in view of the fact that we did not hear all concerned, our directions may not be used against them. We are quite sure in our minds that what has been challenged before us is the very nexus of the whole process of cadre allocation and not,repeat not, the allocation of any particular person to any one of the units, on any particular basis or ground. Therefore, our orders, if they do affect persons other than the applicants, such persons will be free to, if they deem fit, challenge only the principles used in the new process regarding their validity, but it will not be legally open to them to challenge the process as a whole, as directed by us, unless they do so in a higher Court

11. The O.A is accordingly disposed of with the direction to the respondents as contained in para 4 to 10 above.

12. There shall be no order as to costs.

Member - Sd/ S.M. Sd/ A.M.

/Anand/