

(Reserved
on 23.4.2014)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTING OF ALLAHABAD BENCH
AT NAINITAL**

THIS THE 10th DAY OF May, 2014.

PRESENT:

HON'BLE DR. MURTAZA ALI, MEMBER -J
HON'BLE MR. U.K. BANSAL, MEMBER - A

ORIGINAL APPLICATION NO. 576 OF 2005 (U)
(U/s, 19 Administrative Tribunal Act.1985)

Abhinav Kumar, IPS, aged about 31 years, S/o Shri Arvind Kumar, presently posted Senior Superintendent of Police, Haridwar (Uttaranchal)

.....Applicant

V E R S U S

1. Union of India through Secretary, Ministry of Home, New Delhi.
2. State of U.P. through the Chief Secretary, U.P. Shashan, Lucknow.
3. State of Uttaranchal through the Chief Secretary, Uttaranchal Government, Dehradun.

.....Respondents

Advocates for the Applicant: Shri P. Srivastava
Shri R. Pandey
Shri Vinod Kumar

Advocates for the Respondents: Shri K.P. Singh
Shri R.K. Pandey
Shri Firoz Ahmad.

ORDER

DELIVERED BY:-

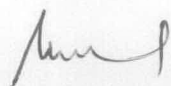
HON'BLE MR. U.K. BANSAL, MEMBER - A

This O.A was filed on behalf of the applicant Sh. Abhinav Kumar, who is an I.P.S Officer of 1996 Batch allotted to U.P. cadre.

2. The applicant seeks the intervention of this Tribunal for quashing the impugned order dated 06.04.2005 passed by the respondents directing that the applicant should be relieved from the State of Uttarakhand for joining his parent cadre, namely U.P. He further seeks the quashing of the impugned orders dated 30.5.2005 and 30.3.2007 passed by respondent Nos. 1 and 3 respectively. The applicant further seeks directions to the respondents to consider the option of the applicant for allotment to Uttaranchal cadre as per the provisions of the State Reorganization Act, 2000.

3. It is noted from a perusal of the file that this Tribunal vide an order dated 24.5.2005, directed the parties to maintain status quo against the order transferring the applicant to the State of U.P. This interim order was extended till the disposal of the O.A. on 12.08.2005.

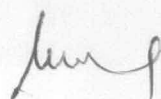
4. The uncontroverted facts of the case are that the applicant was serving as Additional Superintendent of Police, Dehradun at the time of bifurcation of the State of Uttar Pradesh and the creation of Uttaranchal. The applicant gave his option for being allotted to the State of Uttaranchal at the time of bifurcation, which was forwarded by the then S.S.P. Dehradun to I.G. (Personnel) U.P. Police on 20.09.2000.



5. By a notification dated 08.11.2000, some I.P.S. Officers of the U.P. Cadre were allotted to the State of Uttaranchal by respondent No.1. This list did not include the applicant. Hence, the applicant continued to be borne on the U.P. Cadre. The request of the applicant submitted later, for change of his cadre from Uttar Pradesh to Uttaranchal was not found to be in conformity with the policy of the Central Government with regard to change of cadres of All India Service Officers and hence it was rejected by respondent No. 1 by an order dated 31.5.2005.

6. During the intervening period, the applicant filed the following representations, copies of which are annexed with the O.A.

- (i) Addressed to Principal Home Secretary, Uttaranchal dated 20.11.2002 - Through this application, the applicant re-conveyed his option to be part of the Uttaranchal cadre when the cadre was being sought to be expanded.
- (ii) Addressed to Principal Secretary, (Home), Uttaranchal dated 30.07.2004 - The applicant stated that he had earlier given his option for being allotted to the Uttaranchal cadre and reiterated the same request.
- (iii) Addressed to Additional Secretary, Home, Uttaranchal dated 2.11.2004 - The applicant gave reference of his earlier applications seeking Inter State Deputation for a period of three years w.e.f. 01.09.2004 to



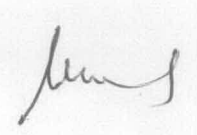
31.08.2007 and also sought the regularization of his continued stay in Uttaranchal cadre since 9.9.2000.

- (iv) Addressed to Additional Chief Secretary, Uttaranchal dated 17.4.2005. The applicant mentioned that the Government of India had agreed to the regularization of his services for the intervening period from 9.11.2000 to 31.3.2005 as an Inter Cadre Deputation **provided he is relieved for Uttar Pradesh after this date.** He, however, urged the Government of Uttaranchal to permit him to continue in Uttaranchal, at-least till such time as his spouse is also serving in the State. Notably, the spouse of the applicant is an Officer of the Indian Foreign Service, who was serving on deputation with the Government of Uttaranchal till 31.1.2007.

7. It has been argued by the learned counsel for the applicant that the matter of cadre allotment of the applicant is covered by the provisions of Section 75 of U.P. Reorganization Act, 2000. It is further argued that despite the recommendations of relevant Authorities, the respondents have failed to allot the applicant to the Uttaranchal cadre in an illegal and arbitrary manner, and that the option given by the applicant has been disregarded.

8. A written statement has been filed on behalf of respondent NO.1 and counter affidavits have also been filed on behalf of respondent No.2 and No.3.

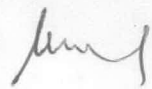


9. Rejoinder affidavit has been filed by the applicant wherein it has been alleged that the Government of India is not maintaining any uniformity or consistency in their policy of Inter Cadre Deputation or Cadre Allocation in respect of different All India Services. The rejoinder affidavit has referred, at length, to Inter Cadre Deputations which is not relevant to the main issues under discussion in this O.A.
10. A supplementary affidavit has also been filed on 12.08.2005 by Shri Arvind Kumar, who is apparently the father of the applicant. In this affidavit, the deponent has stated that matter relating to the applicant in this O.A. is covered under Section 72 and Section 75 of the State Reorganization Act, 2000.
11. Through another supplementary affidavit, the applicant has further reiterated that his case of cadre change is covered by the provisions of Section 75 of Uttar Pradesh State Reorganization Act and that much after the creation of Uttarakhand and the allotment of Officers to the Uttarakhand cadre, changes have been made in cadre allocations. The case of three officers have been cited namely:-
- (a) Shri Raghuvir Lal (IPS of 1997 batch), whose home District is Rudraprayag and cadre has been changed from Uttarakhand to Uttar Pradesh in 2001.
 - (b) Shri Deepam Seth (IPS of 1995 batch) home District Shahjahanpur and cadre changed from U.P to Uttarakhand in 2011.
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- (c) Shri Chitrangad (IPS of 1996 batch) home District Almora, cadre changed from Uttarakhand to Uttar Pradesh in 2012.


12. It is the argument of the learned counsel for the applicant that the applicant has been discriminated against in not being allotted to Uttarakhand cadre and that change of cadre of officers is being ordered selectively by the respondents.

13. The learned counsel for the respondents has focused attention to Section 72 and 75 of the Uttar Pradesh Reorganization Act, 2000. It has been argued that under powers conferred by Section 76 of the Act, the Central Government constituted an Advisory Committee to recommend the initial strength and composition of the cadres of the three All India Services for the States of Uttar Pradesh and Uttaranchal. It was also enjoined upon this Advisory Committee to recommend as to which of the members of the A.I.S borne on the cadre of U.P. should be allotted to the cadre of Uttaranchal. The Advisory Committee, in its final report dated 24.10.2000 recommended the norms and principles to be adopted for allocation of Uttaranchal cadre to A.I.S. officers borne on the cadre of undivided State of U.P. It was argued by the respondents' counsel that this was done after a detailed consideration of statutory provisions, relevant case laws and past practices. The recommendations of this Committee were accepted by the Government with some minor modifications following which 42 I.P.S. Officers borne on the



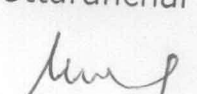
strength of erstwhile U.P. cadre were allocated to the I.P.S cadre of Uttaranchal Pradesh. **Name of the applicant did not figure in the list of these 42 Officers.**

14. The learned counsel for the respondents also stated that another Committee constituted by the D.O.P.T on 9.11.2000 examined the cases of genuine hardship of individual Officers of A.I.S. arising out of bifurcation of cadres. In pursuance of this objective, the State of Uttar Pradesh and Uttaranchal were asked to forward representations received from aggrieved officers along with observations of the State Governments for consideration of this Grievance Committee. It has been stated that the applicant herein did not prefer any representation to this Committee against his retention in his parent State of Uttar Pradesh and it was, therefore, presumed at this stage itself that applicant did not have any grievance against his retention in the U.P. cadre. The respondents' counsel has argued that the applicant has only conveyed his conditional willingness to stay in Uttaranchal on Inter Cadre Deputation. In this connection, the respondents have annexed a letter dated 13.12.2000 sent by the applicant to the Home Secretary, Uttaranchal Government. Further in a representation dated 31.03.2001, the applicant has again moved the U.P. Government requesting for Inter State Deputation for the period of three years on grounds of his family circumstances and the alleged shortage of I.P.S. Officers in the Uttaranchal cadre. Again in July 2004, the applicant sought Inter Cadre Deputation to the State of Uttaranchal up to 31.8.2007.



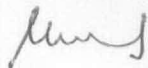
15. With this background, it has been argued by the respondents that the applicant has been repeatedly seeking Inter Cadre, State to State deputation and regularization of his continued stay in Uttaranchal. The respondents have also drawn attention to the Rules governing Inter Cadre Deputation (Rules 6 (1) of I.P.S. Cadre Rules, 1954). It has been stated that since the applicant's case for Inter Cadre deputation was not covered under the relevant instructions and Rules at the time of his making his first application, the same was not allowed. Moreover, any Officer can remain on Inter Cadre Deputation only for maximum period of five years and since the over stay~~al~~ of the applicant in the State of Uttaranchal was reaching this period of five years in 2005, hence it became necessary to issue orders for his immediate repatriation to his parent cadre i.e. Uttar Pradesh.

16. From an analysis of the pleadings and arguments, it is clear that the first impugned order of 6.4.2005 issued by respondent NO.1 relates to regularization of the period of State to State deputation of the applicant and is calling for certain informations in this connection from the State Government of Uttaranchal. It is, therefore, clear that it raises no cause of grievance to the applicant as this order does not give any direction to the State of Uttaranchal to relieve him from the State. Further the applicant was borne on the Uttar Pradesh State I.P.S cadre when the State of Uttaranchal came into



existence i.e. 9.11.2000. He continued in that capacity on the Uttar Pradesh cadre as he was never allotted to the Uttaranchal cadre. Notably at the time of bifurcation of the State of Uttar Pradesh and the bifurcation of cadres, no preferences or options were asked by the Union Government as there was no such legal requirement under All India Service Act and Rules. However, the U.P. Government had called for such options from the concerned officers, which were forwarded to the Advisory Committee constituted for making recommendations regarding allocation of A.I.S. Officers to the State of Uttaranchal. Even if it were to be presumed that the option given by the applicant was forwarded to this Committee, it would not have yielded any results for the applicant as is clear from the methodology adopted by the Committee which is detailed at para 5.7 of the C.A. It is an admitted fact that the applicant is an insider of the residual State of Uttar Pradesh and as averred by the respondents no options were considered or entertained from any insider of both States while allocating the A.I.S. Officers to the two States.


17. The applicant has been repeatedly requesting for Inter State Deputation and the fact that he has stayed for the entire period from the year 2000 to the present, in the State of Uttaranchal including three years of period of Inter Cadre Deputation clearly shows that he is no longer further eligible for Inter Cadre Deputation. The issue of regularization of the



continued stay of the applicant in the I.P.S cadre of Uttaranchal is a separate matter, which is not being claimed as a relief in this O.A.

18. A perusal of Section 72 of the Uttar Pradesh Reorganization Act indicates that the Central Government shall specify which members of All India Service originally borne on the U.P. cadre shall be allocated to the cadre of the new State or shall remain in the parent U.P. cadre. This section does not confer any right to an Officer of All India Service serving in the erstwhile State of Uttar Pradesh to be allocated to either of the cadres simply by virtue of the fact that he was serving in that part of the Uttar Pradesh which specifically came under the State of Uttaranchal upon bifurcation.


19. Section 75 similarly, ensures the continuity of Officers discharging duties of any post in connection with the affairs of the existing State of any area which on the day of bifurcation falls within the successor State and that he shall continue to hold the same post in the successor State and shall be deemed to be duly appointed to the post by the Government of the successor State. This section also does not confer or create any rights of cadre allocation. Section 76 of the Act provides for constitution of a Committee to consider the cases of genuine hardship, if any, of Officers, who are affected by the implementation of the Act i.e. implementation of Section 72. It is notable that while 22 officers represented against their cadre



allocations under these provisions, the applicant was not one of them and hence at this stage, it would be inappropriate, impractical and without any basis to reconsider any representation of the applicant for allocation of Uttaranchal cadre, from the date of creation of Uttaranchal. It may also be mentioned here that the names of officers who were to be allocated to the State of Uttaranchal were finalized on 8.11.2000 but the applicant has been pursuing his case only for State to State deputation.

20. As far as the change of cadre of an I.P.S. Officer is concerned, it is governed by the I.P.S Cadre Rules 1954 and instructions issued by the Government of India vide its O.M No. 13017/16/2003- A.I.S (I) dated 8.11.2004. According to these Rules/Orders, cadre change is permitted on grounds of marriage to another member of the All India Service allotted to some other cadre. Besides this Inter Cadre transfers are permitted on grounds of extreme hardship in the rarest of the rare cases. Extreme hardship for this purpose has been defined to include threat to the life of the Officer or immediate family and severe health problems due to the climate or environment of the State to which he is allotted.

21. The request of the applicant for Inter State Cadre transfer, which was forwarded by the Uttaranchal Government vide letter dated 31.3.2005 to the Central Government did not mention any of the hardships enumerated in the Rules. Hence,



this request of the applicant was not in conformity with the policy of the Central Government with regards to change of cadre and hence his request was not allowed. We do not find any merits in the request of the applicant seeking intervention of this Tribunal for the change of cadre of the applicant from Uttar Pradesh to Uttaranchal since the petition of the applicant has been dealt with in accordance with the Rules on the subject.

22. The applicant has also challenged the order dated 31.05.2005 issued by respondent NO.1 and the order dated 30.3.2007 issued by Uttaranchal Government through his M.A. No.3496 of 2011. The first letter of 31.05.2005 deals with the representation of the applicant regarding his transfer from Uttar Pradesh to Uttaranchal. This letter clarifies that the case of the applicant is governed by clause (Section) 72 of the U.P. Reorganization Act, 2000 and not by clause 75. It has asked the State Government to send a proposal for regularizing his period of unauthorized stay in the I.P.S. cadre of Uttaranchal. This letter also communicates the rejection of the request of the applicant for change of cadre. We find no infirmity in this letter and, therefore, there is no reason to interfere with the same. The second letter (referred above) is issued by the Uttarakhand Government addressed to Mrs. Namrata Kumar wife of the applicant and has no bearing on this O.A. Hence, we do not find any cause to interfere with the same.



23. The learned counsel for respondent No.3 has submitted written arguments to assist the Court in a just disposal of the O.A. It has been reiterated that after the applicant was not allotted to Uttaranchal cadre, he filed an application dated 24.08.2002 before the Central Government for deputation to the State of Uttaranchal. Subsequently by letter dated 17.1.2003, the applicant requested for considering him for cadre change to the Uttaranchal cadre on the grounds that his wife Smt. Namrata Kumar, who is an I.F.S. Officer was, at that time, posted on deputation in the State of Uttarakhand. He also requested vide a letter dated 2.11.2004 for Inter State deputation and to be retained in Uttarakhand State. It was also pointed out that the applicant has been appointed as Private Secretary to the Minister of State for H.R.D. on deputation and he has joined this assignment w.e.f. 19.11.2013, which is in violation of orders of status quo passed by this Tribunal on 24.05.2005. Hence as on date the applicant cannot be termed as an employee of the State of Uttaranchal.

24. The residual matter left before us relates to the issue of 3 I.P.S Officers whose cadre allocations have been changed as submitted by the applicant in his Supplementary Affidavit dated 10.07.2013. The learned counsel for the respondents has averred in his supplementary counter affidavit that cadre change of three officers, mentioned earlier in this order was made on the basis of extreme hardship. The reasons are further elaborated in each case as follows:-



- (i) *Shri Raghuvir Lal - cadre changed from Uttarakhand to U.P on grounds of genuine hardship.*
- (ii) *Shri Deepam Seth- cadre changed from U.P. to Uttarakhand as a special case on the ground of acute shortage of I.P.S Officers in the State.*
- (iii) *Shri Chitrangad - cadre changed from Uttarakhand to U.P on the ground of extreme hardship.*

25. The respondents further argued in their supplementary counter affidavit as follows:-

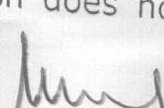
"Further, it is worth mentioning here that the cadre transfers of these officers have been made from their parent cadres to the other cadres. However, the applicant has not yet joined his parent cadre of Uttar Pradesh and therefore, the question of changing his cadre from Uttar Pradesh (his present cadre) does not arise at all".

26. On the basis of the analysis of arguments and pleadings made above, we find that the impugned order issued by respondent No.1 addressed to Chief Secretary Government of Uttaranchal dated 06.04.2005, which has been discussed in para 16 of this order does not deserve to be interfered with. Further as discussed in para 22 above, we find no reason to interfere with the impugned orders dated 30.05.2005 and



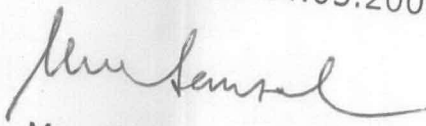
30.03.2007. The relief sought by the applicant by way of directions to the respondents authorities to consider his option as pre provisions of the State Reorganization Act, 2000 is also not found to be justified or admissible in the eyes of law as discussed in paras 18 and 19 of this order.

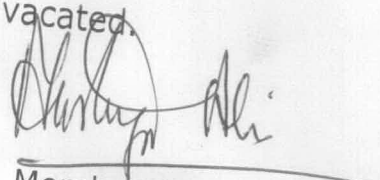
27. From the examples of three Officers quoted by the applicant in his supplementary affidavit and the details provided by the respondents, the case of Sh. Raghuvir Lal and Sh. Chitrangad having been considered favourably on grounds of extreme hardship which appears to be acceptable as the Central Government is within its rights to judge the level of hardship and whether it merits consideration for a change of cadre. It is also noted that the applicant has not claimed grounds of any extreme hardship for change of his cadre. However, the case of Shri Deepam Seth in which his cadre is changed from U.P. to Uttaranchal as a special case on grounds of acute shortage indicates that the Union of India has exercised a level of discretion in ordering the same on grounds other than matrimony and extreme hardship. The applicant has also been referring to shortage of IPS Officer in Uttaranchal in most of his representations, dating from the time of the creation of the State, and asking for a change from U.P to Uttaranchal cadre on this ground. The contention of the respondents that the question of changing his cadre from Uttar Pradesh does not arise because the applicant has not yet joined his parent cadre of Uttar Pradesh does not appear to



provide sufficient grounds for indecision on this subject on the part of respondent NO.1 since the officer is always being considered as borne on the Uttar Pradesh cadre, which is his parent cadre right from the beginning. Hence, if the applicant chooses to prefer any fresh representation for change of his cadre, the same may be dealt with by respondent No.1 as per rules and past precedents.

28. We take note of the fact that the applicant had filed this O.A. in May 2005 and has remained on the strength of Uttaranchal cadre of I.P.S., throughout the intervening period till now as he was granted interim relief of status quo way back on 24.5.2005. A perusal of the file indicates that this stay was never vacated. Hence, we direct that his entire service during the pendency of O.A. be treated as regularized for all purposes as regular service in I.P.S discharged by the applicant with all consequential benefits. With these directions, the O.A is dismissed with no order on costs, and the interim stay granted by this Tribunal dated 24.05.2005 is vacated.


Member (A)


Member (J)

Manish/-