

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD.

Allahabad This The 8th Day of May 2000
Original Application No. 96 of 2000

CORAM:

Hon'ble Justice Mr. Neelam Ranjiva Reddy, V.C.

Hon'ble Mr. S. Biswas, J.M.

M. Bala Krishna Reddy,

S/o M. Ayyanna, aged about 31 years,

Occ: I.F.S. Probationer,

IGNFA, New Forest, Dehradun 248 006.

.....Applicant

Vs.

Union Of India rep by Secretary,

Ministry Of Environment and Forests,

Paryavaran Bhavan, C.G.O. Complex,

Lodi Road, New Delhi.

.....Respondent

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By:

Hon'ble Justice Mr. Neelam Sanjiva Reddy, V.C.

Hon'ble Mr. S. Biswas, A.M.

1- The applicant was selected for the Indian Forest Service by UPSC, on the basis of 1992 examination held in 1993. He has challenged the impugned order dated 30-12-99 of Indira Gandhi National Forest Academy, read with notification No. 17015/01/94-175 II dated 31-08-95 issued by the respondent, the Secretary Ministry of Environment of Forests assigning the applicant, the joint cadre of Assam-Meghalaya- as against his preference and eligibility for Andhra Pradesh Cadre.

2- Some undisputed facts have emerged through the pleadings and submissions of the rival parties. The same may be stated as under.

3- The applicant, hailing from Andhra Pradesh had given his cadre choice for Andhra Pradesh cadre- in the application. In the final and revised list of successful IFS candidates in order of merit declared by the respondent, the applicant was ranked 2nd. He is also first among the selected candidates from Andhra Pradesh for the insider quota on the basis of 2:1 ratio. Though the Govt. of Andhra Pradesh made a requisition for 5 posts for the state, in 1993, the respondent by the impugned order dated 31-8-95 side-tracked the state requisition for 5 posts and instead filled only 2 posts all by outsiders and no insider was taken as per the set ratio of 2:1. The applicant being the topper among the select candidates from Andhra Pradesh was directed by the impugned order dated 30-12-99 of IGNFA to report to PCCF Meghalaya for on-the-job training. Both the impugned orders (dt 31-08-95 and

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30-12-99) which are supplementary to each other have been challenged by the applicant on the ground of non observance of the laid down principles of cadre allocation and that the applicant's right to equality under Art 14 of the constitution was infringed.

4- The learned counsel for the applicant has elucidated the norm on cadre allotment at length saying that till 1982 exam., the outsider and insider ratio in all Indian Services used to be 1:1. This was changed to 2:1 following an enhancement of quota for the promoted (IAS) officers from state civil services from 25% to 33.33%. This change in policy was adopted in the meeting of Chief Ministers held in 1983 in consideration of the fact that increase in quota for promoted officers, would require to be adjusted by reduction in insider in-take of Direct Recruit IAS.

5- The Estimate Committee (1983-84) of the 7th Lok Sabha on 17th April 1984 recommended gradual increase of "outsiders" and consequently the Central Govt. undertook a policy of allotting DR-outsiders and DR-insiders to different states in the ratio of 2:1. The details of the principles, as revised were explained by UOI letter dt 30-07-84 and further letter dt 31-05-85- issued by the Ministry of personnel and the same is being followed since then in the matter of allotment of cadres from the civil services (Main) Exam. 1983 and IFS from 1983. The ratio of 2:1 is avowedly required to be maintained for ensuring efficiency and national integrity.

6- The applicant's counsel states that this norm has not been observed in the case of the applicant in as much as only two posts against 5 posts required by the state of Andhra Pradesh were allotted and both these posts were filled by outsiders without apportioning even one of them to the eligible insider from Andhra Pradesh. The applicant being number one from Andhra Pradesh was eligible for the insider quota. But he was denied allotment

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to Andhra Pradesh Cadre.

7- The learned counsel for the applicant has pointed out that if the ratio of 2:1 would have been applied in true spirit of the principles laid down by the respondent, these 2 posts should have been apportioned between the outsiders and insiders at 1.33 (outsider) to 0.66 (insider). Going by the norm of arithmetical fraction below 0.50 to be bracketed as 'Zero' and above 0.50 to be taken as 'one', the 1.33:0.66 ratio should have been rounded off to 1:1 as 0.33 is below 0.50 and 0.66 is above 0.50. In the case of Kumari Bindeshwari Negi Vs. UOI (OA 1603/91) the DOPT filed additional affidavit conceding the practice of rounding off of arithmetical fraction below 0.50 to one and so on. The two vacancies considered by the respondent for Andhra Pradesh should have accordingly been allotted by giving one to outsider and one to the insider candidate, seeking home state on the basis of his position in the merit list. The principle set in this behalf by the respondent was not observed in the case of the applicant.

8- The applicant's counsel further states that from the year of revision of the ratio to 2:1 in 1984 to 1993, 49 posts of I.F.S. were allotted to Andhra Pradesh with the break-up of 35 outsiders and 14 insiders. This works out to an effective ratio 2.5:1 which is a gross departure from 2:1 ratio, whereas, at any given point of time the ratio should be possible to be maintained at 2:1. The rules do not permit the ratio to be tampered to a different ratio. The denial of the applicant's cadre choice for Andhra Pradesh as number one insider, was arbitrary and violative of the principle of cadre allotment. The cadre principle is to be maintained on year to year basis, which was evidently not observed in 1993. The allotment

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of 2 posts against the requisition of 5 has compounded the allegation of non-observance of the principles.

9- The learned counsel for the respondent submits that the application has been filed after four years of cadre allotment notification dt 31-08-95, hence, the application is time-barred. The order dt 30-12-99 advising the applicant to report to PCCF Meghalaya for on-the-job training is only a follow-up action to cadre allotment order dated 31-08-95. The learned counsel for the respondent objected that these are not to be merged together for commuting the laches, It is to be independently commuted on the basis of cadre allotment order dt 31-08-95. The applicant neither made any representation to the respondent against it, nor filed the O.A. in time.

10- The learned counsel for the respondent further submits that the applicant after completing his training in Lal Bahadur Shastri National Academy of Administration was required to report back to IGNFA, which he did not do, Consequently the applicant had to be relieved in absentia from IGNFA on 30-12-99 with direction to report to PCCF, Meghalaya for on-the-job training for 8 months. In between from 30-12-99 his whereabouts were not known. The training of the applicant in LBSNAA was completed on 29-12-99, and he was relieved by IGFA for reporting to Meghalaya, on 30-12-99. Hence, his application before Allahabad Bench of CAT suffers from lack of territorial jurisdiction. The applicant should have filed this application either before the Principal Bench, N. Delhi or before Guahati Bench of CAT under which he stands posted.

11- We have considered both these submissions of the learned counsel for the respondent and find that as far as the plea of time bar is concerned, the applicant was admittedly discharged from service on 27-9-96 for alleged unauthorised absence during his

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probation, but reinstated on 30-04-99, by order of Hon'ble High court of Andhra Pradesh, Hyderabad(WP 19573/1998). In the situation, we are inclined to overlook this interim period when the applicant was not in service and could not have done anything on his cadre allotment order till reinstatement. We treat the application within time.

12- The applicant filed the petition before this Bench, as he, in our view, at the material time and date was attached to LBSNAA Mussoorie in the first place. Then after completing his training in Mussoorie on 29-12-99, but before he could rejoin at Dehradun, being the head quarters of IGNFA- as he was expected to do, he was treated as relieved on 30-12-99. He was expected to report back at Dehradun for receiving further order. The respondent did not make out his case by issue of a specific direction to the applicant; but he was relieved on 30-12-99 in absentia.

13- The applicant received all orders, pay and allowances and arrears from IGNFA Dehradun, not from elsewhere. Even now his case is being monitored by the respondent through IGNFA Dehradun which is the headquarters for IFS probationers. His relief and posting order to PCCF Assam-Meghalaya dt 30-12-99 was issued from IGNFA . In terms of R 6(1) "where a cause of action wholly or in part has arisen", the applicant can file his application within that territorial jurisdiction. From there only he was directed to go to Meghalaya to finish his on-the-job training. This was evidently the last lap of the training. Though he was treated as relieved from Dehradun on 30-12-99, the applicant has not yet joined at Meghalaya, thereby, in our opinion, his headquarters have not yet shifted to Meghalaya and his application is maintained ^{abu} within the territory of U.P. under R 6 (1).

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to accept the contention of the first respondent regarding carry forward of insider vacancies. The roster is framed bearing in the mind this requirement of increasing outsider in the quota of direct recruits. The policy required that at least $66 \frac{2}{3}\%$ of the officers who are directly recruited are from outside the state concerned. It does not impose a ceiling of $66 \frac{2}{3}\%$."

16- We have heard the rival counsels at length. We cannot help observing that both sides have heavily relied on revised principles of cadre allotment, which was introduced from the recruitment year 1984 to all-India services, in pursuance of the recommendations of the Estimate Committee (1983-84) which run as follows:

"The committee see, merit in gradual increase in the percentage of outsiders in the state cadre. This would enable the cadre officers serving within the states to be largely above local pressures. Moreover, this would also lead to national integration which is the need of the hour."

17- Though the language used in this was "gradual increase", but the ratio was increased from 1:1 to 2:1 and finally fixed at 2:1. The intent and purpose of this recommendation was to increase the intake ratio of outsiders, but not to change or flout the ratio once it was revised. The revised ratio of 2:1 could be progressively changed by another order only not in between. No other meaning or purpose can be attributed to this recommendation. Otherwise, the authority may one day deny insider quota altogether. This Do letter of the UOI dt 31-5-85 which along with the policy decision order dt 30-7-84 are widely quoted in different decision of Hon'ble S.C.

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and Benches of CAT are to be looked into in proper perspective. In the present OA, none of the parties have annexed copies of these orders/Do. The guiding principles obtained from these letters and policy order are available in Kumari Bidhyeshwari Negi Vs. UOI. They are as under:

- i) Allocation of 'insiders', both men and women, is strictly according to their ranks, subject to their willingness to be allocated to their home states.
- ii) Allocation of 'outsiders' whether they are general candidates or reserved candidates, whether they are men or women, is according to the roster system after placing 'insiders' at their proper places on the chart as explained below.
- iii) All the states Cadres/Joint Cadres are arranged in alphabetical order and divided into four groups each of which, on the basis of the average over a period of time, is taking roughly equal number of candidates.
- iv) Since the number of Cadres/Joint Cadres is 21, the cycles are 1-21, 22-42, 43-63 and so on.
- v) The 'insider' quota candidates are then distributed among the states and assigned to different cycles of allotment. For example, if a State gets 4 'insider' candidates, they should go to the share of the State in their respective cycles and if there are 2 'insider' candidates from the same cycle, they should be treated as going to the States in two successive cycles and so on.
- vi) In the first cycle, State Cadre/Joint Cadres which have not received 'insider' candidates are given one candidate each in order of merit of 'outsider' candidates. The process is repeated in successive group of States e.g. the second cycle begins from Group II State, the third cycle with Group III States

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and the fourth cycle with Group IV States and the fifth cycle again with Group I States. Occasionally, it may happen that a candidate's turn may come in such a way that he/she may get allocated to his/her own home State, when that happens the candidate next below him/her is exchanged with him/her.

vii) For the succeeding year, the State Cadre are arranged again in alphabetical order but with Group I of the previous year at the bottom i.e. Group III will come on top and so on.

viii) In the case of candidates belonging to the reserved category such of these candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, are treated on par with general candidates for purpose of allotment though they are counted against reserved vacancies. In respect of other candidates belonging to the reserved category, a procedure similar to the one adopted for general candidates is adopted. In other words, a separate chart is prepared with similar grouping of states and similar operational details are followed."

18- After going through the rules. We notice that the 2:1 ratio is being enforced by the respondent more by default. It is not a transparent case of the respondent that the state-wise vacancy position was properly recast in consultation with the states. Obviously in the case of the applicant, the rule of 2:1 was not implemented by the respondent. The state of Andhra Pradesh asked for 5 posts to be filled in 1993, but the respondent filled only 2 posts, all by outsiders, it could therefore not be the case of the respondent that the roster was correctly maintained taking the full requirement of the state. Besides only few states like U.P., Bihar, AM, AGMUT could have got one insider. The states with less than 3 posts were not given even one each,

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o. i., if the applicant's submissions are to be understood. Wherever, only two posts were given, the same should have been apportioned in the ratio of 2:1. Had that been done, the outsider quota would have worked out to 1:33 and insider to 0.66. By rounding off the arithmetical fraction, one post each to insider and outsider would have gone for Andhra Pradesh.

19- In their own submission before Delhi Bench of CAT in Kumari Bedhyashari Negi Vs. UOI (OA 1603/91), the respondent (UOI) admitted vide additional affidavit that in case of 2 posts, one post would go to the insider. This principle was not adhered to in the case of the applicant. Having defaulted in correctly applying the ratio, the right of an applicant has been wished away by a wrong interpretation of the principle. The argument that no legal right is vested in the candidate appears to be an over-enthusiastic misappreciation of Hon'ble S.C.'s observation. The supreme court in Ramana D. Shetty Vs. International Airport (AIR 1979 SC 1628 held as under:

"It is well setted rule of administrative law that the executive authority must rigorously hold to the standards by which it professes its action to invalidation of an act in violation of them." There are several judgements on this point. In Rajiv Yadav case, the Hon'ble S.C. has no where observed that 2:1 ratio is not to be adhered to.

20- The very principles which have been statedly applied, require the same level of scrutiny as of any law. The respondent has to satisfy at any given year that the ratio 2:1 was implemented in the cadre allotment. It cannot be the case of the respondent to say that the insider quota can be reduced over the period as it has, as a matter of fact, happened in the present case. A recommendation

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in any case is only a recommendation. It can hardly be cited to infringe the basic principle. A Total Number of 47 posts were filled from 1984 to 1993- as per the following chart in Andhra Pradesh.

Year of Allot.	1984	85	86	87	88	89	90	91	92	93
Insider	1	3	3	3	-	-	1	2	1	-
Outsider	6	5	4	3	-	3	4	3	3	2

In this the Total Number of outsiders was 37 and Total Number of insider 14.

21- The ratio between insider and outsider fell short of the requisite 2:1. Between this period it stopped to 2:5:1 which shows that the 2:1 ratio as per the set principles was not honoured. Had the roster been transparent, this could not have happened. The principles at 31-5-85 read with the policy statement at 30-7-84 were vitiated by non-observance. This can not be a justified action. The impugned order 31-8-95 was strictly not in accordance with the policy declaration, cited by the respondent himself.

22- The respondent's counsel submits that for getting oneself allocated to one's home state there has to be an insider vacancy. If no insider is available to be allocated against the insider vacancy, the said insider vacancy is filled by any an outsider. There was no insider vacancy in Andhra Pradesh state in 1993. The same is subject to scrutiny.

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23- In this affidavit the respondent's counsel has admitted that number of probationers to be allocated to the respective state depends on the total number of probationers available for allocation in a particular batch and also "Cadre Gap", if any, There is no such mention in the rule that the apportionment is not to be made on year to year basis and it is not applicable where such apportionment is arithmetically possible to be made. In this case, we have observed that 2 posts were possible to be apportioned in the ratio of 2:1.

24- A simple look at the rules show that allotment of vacancies is required to be made on state to state basis and their respective vacancy position in the year. The intended consultation with the state on vacancy position has not apparently taken place. The cadre gap for Andhra Pradesh was 3 insider vacancy in 1993. The cadre gap and carry forward issue are independent. The cadre gap is relatable to 2:1 ratio as well.

25- The argument of the counsel for the respondent is well off the mark. As per the principle, the vacancy for the state is worked out in consultation with the state. The Govt. of Andhra Pradesh gave a requisition for 6 vacancies. The counsel for the respondent has not specifically denied this. It does not seem to be a transparent statement that only 2 posts were allocated by the respondent to Andhra Pradesh by-passing the actual requirement.

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26- According to (ii) of the principles allocation to outsider is to be made according to roster system, after placing insider candidates in their proper place. In the first place according to "Cadre Gap" worked out above (Supra) against 33 outsiders posted to Andhra Pradesh, 17.50 or 18 insider should have been taken upto 1993. The Commission created a cadre gap of 3 posts in the quota of insiders. One need not talk of carry forward to understand this "Cadre Gap". The respondent is also not saying that it is a carry forward problem, but a cadre gap ^{due} to ~~non~~ application or flouting out the base ratio. Hence, to fill all the two posts in 1993 by outsiders tantamounts to violation of the principles, set by the respondent himself.

27- Secondly, allotment of both the vacancies of 1993 to outsiders is an illegal act by-passing the fixed ratio of 2:1 obtained in the guidelines. It is the fundamental right of the applicant to challenge any warped denial of the provision of law or procedure.

28- The respondent's counsel have cited the below mentioned judgements in support of the counter.

i) Union Of India Vs. Mhathung Kithan (1996 10-SC (562) and

ii) Union of India and others Vs. Rajiv Yadav IAS and others.

In both these cases, the petitions for choiced state cadre allotment were dismissed for altogether different reasons.

In Mhathung Kithan's case which deals the petition in the background of 1984 policy perspective, the claim for allotment to a particular cadre was made on the ground that the carry forward

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post be given weightage. The Hon'ble P.C. held that there would be no carry forward. This observation does not preclude that there would be no year to year recasting and apportionment of the vacancies as per fixed ratio. In the case of the applicant, the spirit of this observation was not heeded. We have already noticed in this case that the requisition for 5 posts for the state of Andhra Pradesh was overlooked by the respondent. It was cut down to 2 without making the reasons known or transparent. Even these 2 posts were not apportioned in the ratio of 2:1 in that year. Here the question is not one of carry forward but non-application of 2:1 ratio on year to year basis and non-recasting of the vacancy position for a particular state cadre, apparently, without consulting the state or considering their realistic demands. There is nothing on record to say that the incumbent state did not ask for insider posts.

29- It is an admitted fact that the respondent allotted 2 posts as against the requisition of 5 posts, in order to meet the "Cadre Gap," giving all the two posts to outsider for the sake of filling "Cadre Gap" leaves us with no option but to hold the same as not according to the principle. We have already observed that upto 1993, the "Cadre Gap" was tilted in favour of the outsider by at least 3 posts which should have actually gone to insider. In terms of the overall ratio "for a period" as indicated in the principles since the "Cadre Gap" existed more in favour of the insiders, the case law cited in Mathung Kithan has been out of context. The diversion of insider quota in 1993 by taking only outsiders was grossly illegal.

30- The Rajiv Yadav case has been similarly quoted out of context. In this case, the multiple petitioners sought parity with SC candidates. The applicant had raised the question of enquiry at par

with SC/ST officers for whom because of their lower ranks in the merit list, a parallel roster was prescribed. It was held that the SC/ST officers are eligible to have this consideration and fundamental right of none should be deemed to have been violated under Act 16 (4) of the constitution. The petition was dismissed on this limited ground of parity with SC/ST officers.

31- In view of the foregoing, the O.A. is allowed. In the result, the cadre allotment notification dated 31/8/95 alongwith the direction dated 30/12/99 in respect of the applicant is set aside. The interim order dated 31/1/2000 is made absolute.

32- There would be no order as to costs.

08.5.2000

S. B. Siva
A.M.

M. S. D.
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