



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of order : 03.11.2000

O.A. No. 396/1997  
(Old No. OA 719/94)

Khushwant Singh son of Shri L.S. Sethi, aged 28½ years, permanent resident of 122, Jagriti Enclave, Delhi - 110 092.

... Applicant.

v e r s u s

1. Union of India through the Secretary, Ministry of Environment & Forest, CGO Complex, Phase - II, Lodhi Estate, New Delhi.
2. The Chief Secretary, Tripura Secretariat, Agartala.
3. The Secretary, Ministry of Personnel, Public Grievances & Pensions, North Block, New Delhi.
4. Shri Sanjay Nagpal, 47, Bal Fourst, Chippendale, Sydney - 2008.

... Respondents.



Mr. M.S. Singhvi, Counsel for the applicant.

Shri S.K. Vyas, Counsel for the respondents Nos. 1 to 3.

Shri H.K. Purohit, Counsel for the respondent No. 4.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman  
Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Mr. Justice B.S. Raikote)

This application (OA No. 719/94) originally filed before the Principal Bench of the C.A.T., New Delhi, has been transferred to this Bench ~~of the Tribunal~~ by the order of Hon'ble the Chairman, C.A.T., Principal Bench, New Delhi, dated 05.12.97. Accordingly, the same has been registered with this Tribunal as O.A. No. 396/97.

2. Applicant, Shri Khushwant Singh, has filed this application for following reliefs:-

- (i) Call for the records of the case;

M

- (ii) quash the cadre allocation of IFS Probationers of 1990 batch at Annexure A/1 to the extent the same allocates the applicant to the IFS cadre of Manipur-Tripura (Tripura);
- (iii) quash the cadre allocation of Shri Sanjay Nagpal to the IFS cadre of Union Territory by the respondent No.1;
- (iv) direct the respondents to allocate the applicant to IFS cadre of Union Territories with all consequential benefits including seniority in the Union Territory cadre;
- (v) direct the respondents to pay the cost of litigation to the applicant; and
- (vi) pass any other order or direction, which this Hon'ble Tribunal thinks fit and proper in the facts and circumstances of the case."

3. Applicant stated that he appeared in the Indian Forest Service Examination, 1989, and on the basis of the result of the said examination, he was assigned rank No. 13 in All India merit list. He stated that at the time of applying for appearing in the said examination, the applicant had expressed his willingness to be allocated to his home State, i.e., Union Territory. He has stated that in the merit list, Shri Sanjay Nagpal was at rank No. 12 and the applicant was at rank No. 13. Shri Sanjay Nagpal who had occupied the position over and above the applicant was given offer of appointment to Union Territory vide letter dated 26.07.90 with the stipulation that if the offer of appointment is acceptable to him, he should join the Director, Lal Bahadur Shastri National Academy of Administration, Mussoorie on 20th August, 1990, and in case he does not accept the offer of appointment and does not join the Lal Bahadur Shastri National Academy of Administration within the stipulated time, the offer of appointment would stand cancelled. The said offer of appointment is filed at Annexure A/4. The applicant submitted that in fact, Shri Sanjay Nagpal neither accepted the offer nor joined the Lal Bahadur Shastri National Academy of Administration on or after 20.08.1990. In fact, on the basis of his ranking in Civil Service Examination, 1989, securing 13th rank in All India merit list, he was offered Indian Police Service (IPS, for short) and accordingly, he accepted the said offer to Indian Police Service and he was allocated to IPS cadre on 15.02.91. Thus, Shri Sanjay Nagpal is not a member of IFS. In these circumstances, the applicant should have been allocated to the Union Territory cadre as an 'insider'. He stated that Shri Sanjay Nagpal, who was above in rank, did not join Union Territory cadre as an 'insider', the applicant should have been allocated the Union Territory cadre as an 'insider', being next in the rank. Therefore, allocating the applicant to IFS cadre of Manipur-Tripura vide Annexured A/1 dated 20.03.92 is illegal. The applicant further contended that in pursuance of the guidelines issued vide D.O. No. 13013/5/84-AIS(I)



AN

dated 30/31.05.85 (Annexure A/3), the applicant was entitled to be allocated Union Territory cadre as an 'insider', since he belongs to Delhi. Therefore, Annexure A/1 is liable to be quashed with a direction to the respondents to allocate IFS cadre of Union Territory to the applicant.

4. By filing counter, the respondents have denied the case of the applicant. They have stated that the cadre allocation has been done strictly in accordance with the principles laid down by the Government of India, Ministry of Personnel & Training, Administrative Reforms and Public Grievances and Pension, New Delhi, vide Annexure A/3 dated 30/31.05.95. They have also stated that the present application was barred by time. At any rate, the allocation of cadre for the candidates appointed to the IFS was considered strictly in accordance with the aforesaid guidelines. Such candidates considered were 67 in number, including those who have already joined the service and others who have to join the training subsequently. He further stated that at the time of issuing the notification dated 20.03.92 vide Annexure A/1, the names of Shri Sanjay Nagpal and 7 others who have not joined the service, were not included in the notification. They further submitted that the process of cadre allocation once finalised, cannot be reversed or changed. They stated that for the year 1990 batch of the IFS, there was only one vacancy in the Union Territory cadre, which was to be filled up by an 'insider' candidate. They further stated in paras 11 and 12 of the reply, as under:-



11. With reference to paras 4.10 and 4.11, it is admitted that Shri Sanjay Nagpal was given offer of appointment by the answering respondents. It is, however, submitted that all the candidates recommended by the Union Public Service Commission on the basis of Indian Forest Service Examination results except those whose candidatures have been formally cancelled, are taken into account for the purpose of cadre allocation. Shri Sanjay Nagpal was also considered alongwith other candidates when the allocation of cadre was worked out. Save what appears from records and save what is stated hereinabove, I make no admission of averments in the above mentioned paras.

12. With reference to paras 4.12 and 4.13, it is reiterated that all candidates recommended by Union Public Service Commission for appointment to the Indian Forest Service except those candidatures have been formally cancelled or who did not accept the offer of appointment, are taken into account while deciding the allocation of cadres to them. Save what is stated herein and save what appears from records, I make no admission of the averments in the above paras.

5. Thus, they contended that Sanjay Nagpal, who was above the applicant, was given offer of appointment by the respondents and he was also considered alongwith other candidates, when the allocation of cadre was worked out and once the process of cadre allocation was

*M*

finalised, it cannot be reversed even in case Shri Sanjay Nagpal did not join IFS cadre. In other words, it is the contention of the respondents in short that due to the cancellation of allocation of Union Territory cadre to Shri Sanjay Nagpal, the applicant was not entitled to the same as an 'insider' only because he was next in rank to Shri Sanjay Nagpal. Accordingly, the respondents submitted that there are no merits in the application and the same is liable to be dismissed.

6. Heard the learned counsel for the parties.

7. Both from the pleadings as well as the arguments addressed at the Bar, two points arise for our consideration. Firstly, whether this application is in time and secondly, whether the applicant would be entitled to allocation of Union Territory as an 'insider' only because Shri Sanjay Nagpal, who was shown above the applicant in rank, did not join Indian Forest Service as 'insider' of the Union Territory cadre.

8. Taking up the first point regarding limitation, we find that the applicant has challenged the cadre allocation dated 20.03.92 vide Annexure A/1. By this order, the applicant was allocated Manipur-Tripura cadre by placing his name at Sl. No. 37. If the applicant was aggrieved by this order dated 20.03.92 on the alleged ground that he should have been allocated IFS cadre of Union Territory, he should have challenged the same within one year in terms of Section 21(1)(a) of the Administrative Tribunals Act, 1985. Section 21(1)(a) reads as follows:-



21.Limitation.-(1) A Tribunal shall not admit an application,

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made."

From the reading of the above Section, it is clear that the prescribed period of limitation for filing an application before this Tribunal is one year from the date of order, the applicant is aggrieved of. Therefore, the applicant should have preferred an application before this Tribunal on or before 20.03.1993, whereas this application is filed before the Principal Bench of C.A.T., New Delhi, on 18.04.94. From this, it follows that this application is filed before this Tribunal after ~~after~~ 2 years of the impugned order of allocation dated 20.03.92. The applicant has not filed any separate application for condonation of delay by showing sufficient cause in terms of Section 21(3) of the Administrative Tribunals Act, 1985. However, the applicant in para 3 of the application stated that he was not aware

that Shri Sanjay Nagpal, who was allocated Union Territory as an 'insider', had not joined Indian Forest Service in Union Territory cadre and he had joined Indian Police Service on 09.09.90. He came to know that Shri Sanjay Nagpal did not join Union Territory cadre only in the month of October, 1992, therefore, he made a representation dated 30.10.92 and even 6 months thereafter, no reply was received from the respondents. Thus, more than one year was elapsed from the date of representation and in these circumstances, the applicant approached this Tribunal. But we notice from the impugned order itself that Shri Sanjay Nagpal was not allocated Union Territory. The applicant admitted having received Annexure A/1 dated 20.03.92, in which his name appears at sl. No. 37. Against his name, it was shown that Manipur-Tripura was allocated to him. Therefore, from this order itself, the applicant could know that Shri Sanjay Nagpal was not allocated Union Territory. Therefore, he should have challenged Annexure A/1 itself within one year with a prayer for quashing of the same and for a further direction that he should be allocated Union Territory cadre. That he has not done. He should have approached this Tribunal within one year from the date of Annexure A/1 and his filing representation later was unnecessary. If he was really aggrieved of the order Annexure A/1, he should have straight away challenged the same instead of filing the representation. Therefore, we find that prima facie, this application is barred by time.



8. Now coming to the point No.2, we have to see whether the applicant is entitled for allotment of Union Territory cadre only because a person above him in rank, did not join the Union Territory cadre as an 'insider'. The fact that the applicant and Shri Sanjay Nagpal were 'insider', is not in dispute. The Government of India has laid down guidelines vide Annexure A/3 dated 30/31.05.1985. We think it appropriate to extract the relevant paras of the guidelines as under:-

".....The broad principles of allocation on the basis of roster system would be as follows:-

- (1) The vacancies in every cadre will be earmarked for 'outsiders' and 'insiders' in the ratio of 2:1. In order to avoid problems relating to fractions and ensure that this ratio is maintained, over a period of time, if not during even allocation, the break-up of vacancies in a cadre, between 'outsiders' and 'insiders' will be calculated following the cycle of 'outsider', 'insider', 'outsider'.
- (2) The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in the various cadres according to the prescribed percentage. For purpose of this reservation, Scheduled Castes and Scheduled Tribes will be grouped together and the percentages will be added. Distribution of reserved vacancies in each cadre between 'outsiders' and 'insiders' will be done in the ratio of 2:1. This ratio will be

*[Handwritten signature]*

operationalised by following a cycle 'outsider', 'insider', 'outsider', as is done in the case of general candidates.

- (3) Allocation of 'insiders', both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States.
- (4) Allocation of 'outsiders', whether they are general candidates or reserved candidates, whether they are men or women, will be according to the roster system after placing 'insiders' at their proper places on the chart as explained below:

- (i) All the State Cadres/Joint Cadres should be arranged in alphabetical order and divided into four groups which, on the basis of the average over a period of time, are taking roughly equal number of candidates each. On the basis of average intake during the last 4 years, the groups could be as follows:

Group I: Andhra Pradesh, Assam-Mechalaya, Bihar and Gujarat.

Group II: Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala and Madhya Pradesh.

Group III: Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim.

Group IV: Tamil Nadu, Union Territories, Uttar Pradesh and West Bengal.

- (ii) Since the number of cadres/Joint cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on.

- (iii) The 'insider' quota should then be 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 two 'insider' candidates from the same cycle, they should be treated as going to the State in two successive cycles and so on.

- (iv) The 'outsider' candidates should be arranged in order of merit and allotted to the State cadres in cycles as described in (v) below.

- (v) In the first cycle, State cadre/Joint cadres which have not received 'insider' candidates should be given one candidate each in order of merit of 'outsider' candidates. The process should be repeated in successive cycles, each successive cycle beginning with the next successive group of States, e.g., the second cycle should begin from Group II States, the third cycle with Group III States 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 may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

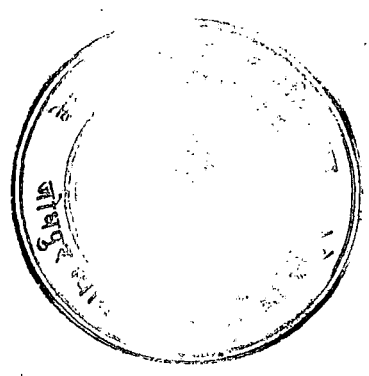
- (vi) For the succeeding year, the State cadres should be arranged again in alphabetical order but with Group I of the previous year at the bottom, i.e., the arrangement will begin with Group II on top. In the third year,



*[Handwritten signature]*

Group III will come on top and so on.

(iii) In the case of candidates belonging to the reserved category, such of those 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, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details should be followed. If there is a shortfall in general 'insiders' quota it could however be made up by 'insider' reserved candidates."



9. From the above guidelines, it is clear that the allocation of cadre is done on the basis of roster system. The vacancy in every cadre would be earmarked for 'outsiders' and 'insiders' in the ratio of 2:1 and the procedure for identifying number of posts meant for 'insider' and 'outsider', would be distributed among the States and assigned to different cycles of allotment and the State cadres are required to be arranged in alphabetical order and divided into four groups on the basis of the average over a period of time. On the basis of average intake during the last four years, such four groups are mentioned in para 4(i) of the guidelines filed at Annexure A/3. From the above guidelines, it is clear that once the allotment of cadre is made on the basis of 'insider' and 'outsider', that allotment, prima facie, becomes final. If for any reason, either 'insider' or 'outsider' does not join, this exercise again need not be taken because it would definitely create confusion, if the roster is worked out again only because someone did not join, the 'insider' may become an 'outsider' and the 'outsider' may become an 'insider'. Perhaps, in this background only the respondents submitted in the reply that once the allotment is made, that cadre allotment has become final. The respondents have further submitted that only because Shri Sanjay Nagpal did not join the IFS cadre of Union Territory, would not entitle the applicant to claim for Union Territory, since he was already allotted the IFS cadre of Manipur- Tripura vide Annexure A/1. It is not the case of the applicant that he joined Manipur-Tripura cadre under protest. In fact, it is his case that he accepted Manipur-Tripura cadre on the basis of Annexure A/1 without knowing that Shri Sanjay Nagpal was not allocated Union Territory cadre and he joined Indian Police Service. If the allotment of Manipur-Tripura cadre was not acceptable to the applicant, the applicant should not have accepted Annexure A/1 dated 20.03.92 or he should have challenged the same before appropriate forum within limitation. Therefore, the applicant

AM

is estopped from contending that the cadre allotment order Annexure A/1 is illegal or not allocating him the Union Territory cadre was bad. Moreover, Hon'ble the Supreme Court in Union of India vs. Rajiv Yadav, IAS & Ors. [1994 (4) SLR 547], held that the guidelines issued by the Government of India for allocation of cadre do not confer any right to claim allocation to a State of his choice or to his home State. We think it appropriate to extract the relevant para of the judgement as under:-

5. We have given out thoughtful consideration to the reasoning and the conclusion reached by the Tribunal. We are not inclined to agree with the same. Rule 5 of the Cadre Rules provides that the allocation of the members of the IAS to various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned. Sub-rule (2) of Rule 5 further provides that a cadre officer can be transferred from one cadre to another. When a person is appointed to an All India Service, having various State cadres, he has no right to claim allocation to a State of his choice or to his home State. The Central Government is under no legal obligation to have options or even preferences from the officer concerned. Rule 5 of the cadre Rules makes the Central Government the sole authority to allocate the members of the service to various cadres. It is not obligatory for the Central Government to frame rules/ regulations or otherwise notify "the principles of allocation" adopted by the Government as a policy. The letter dated 31.05.85 shows that the Central Government has always been having guidelines either in the shape of "limited zonal preferences system" or "Roster System" for the exercise of its discretion under Rule 5 of the Cadre Rules. Simply because the principles of allocation called "Roster System" were not notified, it is no ground to hold that the same are non est and the Central Government cannot follow the same. In any case, the "Roster System" has stood the test of time. It was operative during the year 1966 to 1977 and again it is being followed from 1985 batch onwards. The fact that the "Roster System" is being followed in practice by the Central Government for all these years, is in itself a sufficient publication of its principles.

6. We may examine the question from another angle. A selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service. A member of an All-India services bears liability to serve any part of India. The principles of allocation as contained in clause (2) of the letter dated 31.05.1985, wherein preference is given to a Scheduled Caste/ Scheduled Tribe candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of Article 16(4) of the Constitution of India does not arise. It is common knowledge that the Scheduled Caste/Scheduled Tribe candidates are normally much below in the merit list and as such are not in a position to compete with the general category candidates. The "Roster System" ensures equitable treatment to both the general candidates and the reserved candidates. In compliance with the statutory requirement and in terms of Article 16(4) of the Constitution of India 22½% reserved category candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. But for the "Roster System" it would be difficult rather impossible for the Scheduled Caste/ Scheduled Tribe candidates to be



PN

allocated to their home States. The principles of cadre allocation thus, ensure equitable distribution of reserved candidates amongst all the cadres."

(Emphasis supplied by us)

10. In the above judgement, Hon'ble the Supreme Court pointed out that when a person is appointed to an All-India Services, having various State Cadres, he has no right to claim allocation to a State of his choice or to his home State and the Central Government is under no legal obligation to have options or even preferences from the officer concerned. Hon'ble the Supreme Court has further pointed out that a selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home State and the allotment of service is an incidence of service. The Apex Court further pointed out that a member of an All-India Services is liable to serve in any part of India. In view of this law declared by Hon'ble the Supreme Court, the applicant cannot contend that he should be allotted the cadre of his choice as a right on the basis of the guidelines issued by the Government of India vide Annexure A/3 as an 'insider' to Union Territory, when Shri Sanjay Nagpal, the person next higher in rank, did not join the Union Territory cadre. In view of the above judgement of Hon'ble the Supreme Court, he has no enforceable right for allotment of Union Territory cadre. Thus, we do not find any merits on the second point also.

11. However, the learned counsel for the applicant relied upon the judgements of Hon'ble the Supreme Court reported in 1999 (9) JT 125 = 1999 (9) Supreme 251 [A.P. Aggarwal vs. Government of National Capital Territory of Delhi & Anr.], AIR 1961 SC 1500 [Raja Harish Chandra Raj Singh vs. The Deputy Land Acquisition Officer & Anr.]. From the reading of these judgements, we find that they do not support the case of the applicant. From Agarwal's case, we find that it deals with certain selections pertaining to the appointment of a Member to the Delhi Sales Tax Appellate Tribunal under Section 13(4) of the Delhi Sales Tax Act read with Office Memorandum dated 14.05.87. Interpreting the said Section and the O.M., Hon'ble the Supreme Court held that one of the two persons in the panel resigned within a period of six months of the date of joining the same, initiation of fresh process of selection without considering the case of the appellant therein, who was also in the panel, was illegal. The instant case is not similar to the one decided by Hon'ble the Supreme Court. As we have already noted above, the guidelines issued by the Government of India dated 30/31.05.85, though do not confer any right as such for allotment any particular cadre. Therefore, the said case is distinguishable from the facts of the present case. The judgement of Hon'ble the Supreme Court



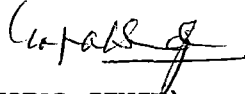
RM

I  
45

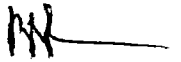
reported in AIR 1061 SC 1500, deals with limitation under Land Acquisition Act, 1894, and Hon'ble the Supreme Court held that the limitation starts from the date of communication of award by the Collector. From the fact, it is clear that even this judgement does not help the case of the applicant regarding limitation. It is not the case of the applicant that Annexure A/1 was not communicated to him. Therefore, limitation starts from the date of order Annexure A/1. But it is his case that the Annexure A/1 was communicated to him and he accepted IFS cadre of Manipur-Tripura without knowing that Shri Sanjay Nagpal did not join IFS cadre of Union Territory as an 'insider'. Thus, even this judgement is distinguishable from the facts of the case.

12. For the above reasons, we do not find any merits in this application. Accordingly, we pass the order as under:-

"Application is dismissed. But in the circumstances, without costs."



(GOPAL SINGH)  
Adm. Member



(JUSTICE B.S. RAIKOTE)  
Vice Chairman

CVR.



Revised Copy  
Bryant  
15/11/2000

Revised Copy  
15/11/2000

Revised Copy  
15/11/2000