

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 154/2008

Dated this the 5th day of February, 2010

C.O.R.A.M

HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE SMT. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Pramod P.P. S/o P. Prabhakaran
Assistant Deputy Conservator of Forests
Office of the DFO, Nilampur North Division,
Nilampur
residing permanently at Prashanthi SPRA
414- Nettayam PO
Thiruvananthapuram-695013 ..Applicant

By Advocate Mr. M.R. Rajendran Nair & Mr. M.R. Hariraj

Vs

- 1 Union of India represented by the
Secretary to Ministry of Environment & Forests
Paryavaran Bhavan,
New Delhi.
- 2 State of Kerala
represented by the Chief Secretary
to Government of India, Secretariat
Trivandrum
- 3 Vijayanathan K.
Indian Forest Service (Probationer)
Indian Forest Service (Probationer)
IGNFA New Hostel, New Forest PFRI Campus
Dehradun, Uttarkhand -248 006
Respondents

By Advocate Mr. Sunil Jacob Jose, ACGSC for R-1
By Advocate Mr. R. Premsankar, GP for R-2

The Application having been heard on 18.1.2010 the Tribunal delivered the following:

ORDER

HON'BLE SMT. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, who qualified the Indian Forest Service Examination 2005, is aggrieved by the refusal of the respondents to allocate him Kerala Cadre.

2 According to the applicant, he appeared in the Indian Forest Service examination for the year 2005 and secured the 38th rank. Based on his ranking, he was appointed to the IFS and allotted to the Manipur-Tripura Cadre(A-1). He belongs to Scheduled Caste Community. As per the policy of the first respondent, in the direct recruitment to IAS/IPS/IFS, the ratio of 2:1 is prescribed between **outsiders** and **insiders** for allocation of selected candidates to State cadres from 1983 onwards (A-2). The broad principles governing the allocation on the basis of the said roster was set out in the letter dated 31.5.1985 (A3). Separate outsider-insider roster must be maintained in regard to all the reserved categories. The ratio is required to be maintained in view of the principles of cadre allocation under the roster system (A-4). In the Kerala Cadre of Indian Forest Service, the above ratio is not maintained. Out of the 69 direct recruits in position, only 20 **insiders** are there. After 1975, not a single SC candidate from the **insider** quota is appointed to the Kerala Cadre. As things stand now, out of the 13 SC candidates in the cadre not a single **insider** is there. Same is the case with ST candidates too. On the other hand, out of the 11 OBC candidates there are 4 **insiders** which is far in excess of the permitted

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quota (A-9 & A-10). The list showing the actual allocation made against the roster points in A-10 is produced (A-11). According to him, the vacancy for the year 2005 examination must be an **insider** vacancy. As such, he ought to have been allotted to that vacancy. Apprehending denial of allotment to Kerala cadre, the father of the applicant submitted a representation (A-12). The applicant filed a representation pointing out the shortfall in the SC insider quota and that the ratio is not maintained (A-13). As there was no response, he filed another representation. He has also made a request under the right to Information Act for certain details regarding the cadre allocation. The applicant is now challenging the order at Annexure A-17 as illegal, arbitrary and discriminatory inconsistent with the statutory rules, and Rule 5 of the Cadre Rules, (ii) the ratio of 2:1 between outsiders and insiders has not been maintained over a period of time (iii) there is in fact no insider candidate among the SC/ST in the direct recruits of Kerala cadre, categorisation of insider vacancies as OBC and SC/ST is not legal (iv) the allocation is not made with proper consultation with the State Government (v) the Tribunal and the Higher Judicial Fora have found fault with the operation and maintenance of the roster in regard to the Kerala cadres.

3 The applicant in support of his case has relied on the orders of this Tribunal in O.A. 725/98 filed by a similar IFS officer belonging to Kerala State successfully challenging his allotment to Assam Meghalaya cadre of the IFS which was upheld by the High Court of Kerala and the order of the Tribunal O.A. 76/2001 a more or less identical case of an IAS officer belonging to Kerala State challenging his allotment to Orissa cadre.

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4 Respondent No. 1 filed reply statement. They submitted that a candidate is considered for allocation to his State as per his rank in the merit list and availability of insider vacancy in that State Allocation of outsider is according to the Roster System after placing insiders at their places. The allocation of vacancies which have been worked out with respect to 2005, shows that there is only one vacancy in the Kerala cadre and as per DOPT guidelines regarding reservation of vacancies, the sole vacancy was earmarked for OBC outsider as there was no insider vacancy for the year. Thus, the applicant is not eligible for the allotment to the Kerala cadre of IFS. They also submitted that there is no provision for carrying forward of insider SC vacancy and the reserved vacancy cannot be kept as backlog for want of insider candidate. The respondents relying on the guidelines of the DOPT regarding reservation of vacancies in the All India Services, submitted that the sole vacancy for the year 2005 was earmarked for OBC outsider as there was no insider vacancy for the year and that at no point of time the State Govt. has brought to the notice of the 1st respondent that there is short fall of insider candidates in the State cadre.

5 The applicant in his rejoinder submitted that the approved cadre strength demands 66 Direct Recruits to the cadre, the insider quota would be then 22. However, there are only 20 insiders. Out of this at least 3 should be earmarked for SC quota. Admittedly, there is no SC in the insider quota.

6 The 2nd respondent filed a preliminary reply statement stating that all the reliefs sought for by the applicant rest with the 1st respondent and that the State Government has no objection in allocating

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the applicant to the Kerala cadre if he is found eligible as per the IFS Cadre Rules and roster system in existence.

7 The 3rd respondent has neither entered appearance nor has he filed any reply statement.

8 We have heard learned counsel for the parties and perused the pleadings.

9 The short question that comes up for consideration is whether there has been any short fall of "insider" quota as per the cycle system prescribed vide Annexure A-3 and if so, whether the applicant should be allocated to that vacancy.

10 It is admitted by both sides that in terms of the instructions contained in the Government of India Ministry of Personnel & Training letter dated 30th July, 1984 and the letter dated 30/31st May 1985, it is necessary to maintain the ratio 2:1 in the case of outsider-insider quota in the State cadre of All India Services over a period of time.

11 The dispute is with regard to the allegation of short fall of Insiders quota in the Kerala State cadre. There is no dispute that a candidate is considered for allocation to his State as per his rank in the merit list and availability of insider/outsider vacancy in the State and that every cadre has a running roster of vacancies which are earmarked as **Outsider-Insider-Outsider, Outsider-Insider-Outsider,** It is not disputed that no SC Insider candidate is appointed in the Kerala cadre since 1975. The respondent No.1 submitted that there is no

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provision for carrying forward SC vacancy against insider quota and the reserved vacancy cannot be kept as backlog for want of insider candidate.

13 The applicant has relied on the judgments of the Tribunal in identical cases in O.A. 725/98 and O.A. 76/2001 in support of his case

14 The O.A. 725/98 was filed by a 1995 Batch Probationer of Indian Forest Service who was allotted to Assam - Meghalaya joint cadre, against the failure of the respondent to consider his claim for allotment to the Kerala cadre of the Indian Forest Service. The Tribunal was not convinced that the allotment has been done over the years in adherence to the guidelines as claimed by the respondents. The operative portion of the order of the Tribunal in that case is extracted below:

"7. In view of the facts and circumstances discussed above, we dispose of this Application, declaring that the non-consideration of the applicant's claim for allotment to Kerala cadre of the IFS is illegal. We accordingly direct the respondents to reconsider the applicant's allotment to the Assam-Meghalaya cadre of the IFS and to consider his allotment to Kerala cadre of the IFS. Appropriate orders shall be made within a period of four months from the date of receipt of copy of this order. No costs."

This order of the Tribunal was upheld by the High Court of Kerala in OP No. 22944/2002.

15 Similarly in O.A. 76 /2002, the applicant an IAS Probationer has challenged the allocation of Orissa cadre to him and sought for a

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direction to allocate to the Kerala Cadre. That case was also allowed by the Tribunal.

"8 In the result, the application is allowed. The impugned order to the extent it allocates the applicant to the Orissa cadre is set aside and the first respondent is directed to issue order allocating the applicant to the Kerala Cadre of the IAS as an insider of the 1993 batch within a period of two months from the a date of receipt of a copy of this order."

16 The Tribunal has occasion to consider a more or less similar case of an IAS Probationer in O.A. 1264/08. The Tribunal held as follows:

13. Now on merit. The admitted position is that the applicant is the first OBC candidate amongst the Kerala State candidates. She ranks fifth in the Kerala State and since there was only one insider allotted during the year 2007, she could not get Kerala posting. The other vacancy meant for outsider (OBC) had been allotted to an outsider (Rank No. 131; Home state Maharashtra). In so far as OBC candidates are concerned, the first OBC after the applicant is one Shri Sachindra Pratap Singh of Uttar Pradesh Home State, (Rank No. 26) and he has been allotted Maharashtra cadre. The applicant has no quarrel in the General candidate above her in the merit list getting the insider vacancy; nor does she have any grievance against the outsider (rank No. 131) getting Kerala. Her grievance is that once she could not be accommodated in the home State as a general candidate, then, she must be given the preference in OBC category, in which she would have been allotted Maharashtra Cadre, instead of Himachal Pradesh.

14. The contention of the Counsel for the respondents is that the applicant having been enlisted in the general cadre due to her merit, she has, as an outsider been allotted to Himachal Pradesh, and the same is strictly in accordance with the provisions of the Relevant Cadre Rules. They have also relied upon the decision of the Apex Court in the case of *Union of India v. Rajiv Yadav, (1994) 6 SCC 38*, wherein the Apex Court has held as under:- *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 Service bears liability to serve in any part of India. The principles of allocation as contained in clause (2) of the letter dated 31-5-1985, 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*

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Article 16(4) of the Constitution of India does not arise.

15. The above decision does not assist the respondents in the instant case, as this case deals with the entitlement to certain preference being extended to a reserved candidate who has been by virtue of merit considered at par with a general candidate.

16. When the choice of the applicant, on the basis of merit as a general candidate, for allotment to the Kerala cadre (as insider) could not fructify, the choice as the first OBC ought to have been made available to the applicant. It has been held in the case of *Union of India v. Satya Prakash*, (2006) 4 SCC 550, as under:-

20. If a candidate of the Scheduled Caste, the Scheduled Tribe and Other Backward Class, who has been recommended by the Commission without resorting to the relaxed standard could not get his/her own preference in the merit list, he/she can opt a preference from the reserved category and in such process the choice of preference of the reserved category recommended by resorting to the relaxed standard will be pushed further down but shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference.

17. The above being the clear law laid down by the Apex Court, the same could well be pressed into service in the instant case. The applicant is still undergoing training and as such, it may not be impossible for the Government to change the cadre. All that is required is to ascertain from the respective State Government concerned and once acceptance is given, to post the applicant to that State. In fact, it is seen from the communication vide Annexure A-11 that as many as 27 vacancies are available at Kerala itself. If there is no plausible reason for not filling up the vacancies, the Union of India could well consider the case of the applicant for Kerala Allotment as well, subject to the same being within the ratio of insider-outsider, reservation percentage etc., This is left purely to the discretion of the Central Government as well as the Government of Kerala, as no vested right has been hampered of the applicant by not allotting Kerala as insider. However, so far as ignoring the preference of the applicant for a particular State by virtue of her being the first amongst OBC, as an outsider, the same is illegal and the action on the part of the respondents cannot thus be legally sustained.

18. In view of the above, the O.A. is allowed to the extent that it is declared that the applicant is entitled to prefer her choice State as an outsider as an OBC candidate and as her preference is Maharashtra, respondents are directed to consider the same and accommodate the applicant in the Maharashtra Cadre. The other reliefs quashing of certain portion of certain orders of the Government, have not been pressed during the course of arguments and hence the same have not been dealt with



in this case.

19 This order be complied with, within a period of two months from the date of communication of this order. If meanwhile the training course is likely to be over, the applicant's posting at Himachal Pradesh shall be treated only as provisional."

17 The respondent No. 1 drew our attention to the judgment of the Apex Court in Union of India & Others Vs. Rajiv Yadav (1994 6 SCC 38) and argued that the applicant has no right to be allocated to a cadre of his choice. The Apex Court in the above case held as follows:

"....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 incident of service. A member of All India Service bears liability to serve in any part of India..."

18 As regards SC and ST reservation and allocation, the guidelines issued by the Government of India DOPT dated 30/31 May, 1985 prescribes that the vacancies in every cadre will be earmarked for outsiders and insiders in the ratio of 2:1:

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

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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

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(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 2, insider candidates from the same cycle, they should be treated as going to the State in two successive cycles and so on.

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(vii) 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.

19 We have gone through the table showing particulars of directly recruited officers in IFS, Kerala Cadre from 1975 to 2006 produced by the applicant as Annexure A-9. We notice that the ratio of Outsider-Insider-Outsider prescribed vide Annexure A-3 guidelines, are not scrupulously followed. A glance at the table from the year 1991 would show that the allocation was as I-O-O-O-O-O-I-O-O-O-I-O-O-I-O and that when 7 General and 6 OBC were appointed, only 2 SC

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candidates were appointed. There is over representation of the OBC and under representation of the SC/ST. This is answered by the respondents in the reply as follows:

"9.as per the present system a candidate is considered for allocation to his State as per his rank in merit list and availability of insider vacancy in that State. Allocation of outsider whether General or Reserved is according to the roster System after placing insiders at their places. Every cadre has a running roster of vacancies which are en-marked as O-I-O, O-I-O.... The Roster of General and Reserved candidates are maintained separately. In case of non-availability of an insider/outsider candidate in a particular year, there is no provision for carry forward of the insider/outsider vacancy. In case an insider is not available against an insider vacancy it is filled by an outsider.

20 The applicant has pointed out that there is over representation of OBC candidates. We notice that there is merit in his contention, as out of 5 candidates allocated to Kerala from 2002 to 2006, 3 are OBCs, with 1 insider and 2 outsiders, as per A-9. Whatever be the procedure adopted, it is seen that the ratio stipulated by the Government is not followed and that a SC candidate is not allocated the State of his choice.

21 It is seen vide Annexure A-11 that there was no allocation during the years 1996, 97, 99 and 2004 even though there were reserved vacancies during 1996, 1999 and 2004. Therefore, certain short fall in the Insider quota in the Kerala cadre is established. As per para 4(vii) of the DOPT letter dated 30/31.5.1985, if there is shortage of general insider quota it could however, be made up by Insider reserved quota.

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22 The case of the applicant is similar to the cases relied on by him. The applicant has obtained 38th rank and he was first among the reserved candidates from Kerala State. There is admittedly shortfall in the insider quota against SC⁺ quota. The State Government has expressed its no objection to the applicant being allocated to the Kerala Cadre if he is a legitimate insider candidate.

23 In this view of the matter, in the conspectus of the facts and circumstance of the case, keeping in mind the guidelines issued by the Govt. Of India at Annexure A-3 and following the dictum laid down by the Tribunal in identical cases cited above, we allow the O.A. We quash Annexure A-1 and A-17 to the extent it allocates the applicant to the joint cadre of Manipur-Tripura of the Indian Forest Service. We declare that the applicant is entitled to be allocated to the Kerala cadre of the Indian Forest Service. We further direct the respondents to consider the applicant for allocation to Kerala Cadre of the Indian Forest Service and grant him allotment to Kerala Cadre. The IR is made absolute by No costs.

Dated 5th February, 2010


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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K.B.S. RAJAN
JUDICIAL MEMBER