

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 164 OF 2008

Wednesday, this the 8th day of July, 2009.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

Shainamol. A, IAS
IAS Probationer
Lal Bahadur Shastri National Academy of Administration
Mussoorie
Permanently residing at Kuninpurath House
Alangod P.O., Via Aluva
Ernakulam District, Pin - 683 511 ... **Applicant**

(By Advocate Mr.Dinesh P.T)

versus

1. Union of India represented by Secretary to Government
Ministry of Personnel & Training Administrative Reforms and
Public Grievances and Pensions
New Delhi
2. The Director of Personnel & Training
Government of India
New Delhi
3. State of Kerala represented by Chief Secretary to Government,
Government Secretariat
Thiruvananthapuram ... **Respondents**

(By Advocate Mr.TPM Ibrahim Khan, SCGSC (R1&2)
Advocate Mr.R.Premsanker, GP (R-3))

The application having been heard on 15.06.2009, the Tribunal
on 8/7/2009 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, an IAS officer of 2007 batch (OBC candidate of
2006 examination batch) is presently undergoing training as IAS
Probationer at Lal Bahadur Shastri National Academy of Administration
Mussoorie. She was at ... 20th rank in the list of successful candidates

published by the Union Public Service Commission as could be seen from Annexure A-4. Amongst the candidates whose Home State is Kerala, the applicant is the 5th candidate and the very first OBC candidate. Amongst the OBC candidates, she happens to be the 2nd in the entire list for that year.

2. The applicant has been allotted Himachal Pradesh cadre in the general category. Her name does not figure in the list of OBC category officers vide Annexure A-4 (2). In the said Annexure, individual who stood at 26th rank has been shown as the first candidate under OBC. The said individual has been allotted Maharashtra cadre (outsider). According to the applicant her preference was Kerala Cadre and since no vacancy was filled beyond one, in the general category, the applicant has to be necessarily posted outside Kerala in which event according to the applicant the benefits available to the OBC candidates should be equally available to her. Merely because the applicant has been more meritorious to be brought at par with other general candidates, she cannot be denied the benefits of cadre allocation. This is the specific grievance of the applicant.

3. The applicant has annexed the following orders as orders impugned :-

- (a) D.O letter No.0.13012/5/84-AIS(I) dated 30/31 May, 1985 from Ministry of Personnel to Shri T.N.Seshan, Secretary, Department fo Forest and Wild Life.
- (b) Annexure A-4 (cadre allocation, 2006)
- (c) Annexure A-4(1) (cadre allocation, 2006)
- (d) Annexure A-4 (2) (cadre allocation of OBC officers, 2006)

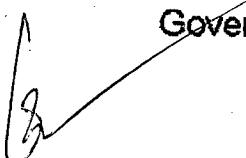
4. The applicant has interalia sought for the following reliefs:-

- i. *Declare that non-providing of OBC reservation benefits to the applicant and treating her as a general candidate for the purpose of cadre allocation by the Respondents No.1 and 2 in Annexure A4 series of Cadre allocation as highly illegal, unjust, arbitrary and unconstitutional.*
- ii. *Declare that the provisions in para 4 (vii) of Annexure A2 order that " 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 purpose of allotment though they will be counted against reserved vacancies " as highly illegal, un constitutional and is violative of Articles 14,15 and 16 of the Constitution of India.*
- iii. *Declare that inaction on the part of the 3rd respondent, the State of Kerala in properly reporting the vacancies of IAS Officers (Direct Recruittees) available in the State to the 1st and 2nd respondents in time which denied the allotment of the applicant in the Kerala cadre as highly illegal arbitrary and against the relevant provisions of law.*
- iv. *Direct the Respondents NO.1 and 2 to allot Kerala cadre to the applicant.*
Or
Alternatively direct the respondents No.1 and 2 to allot Maharashtra cadre to the applicant.
- v. *Call for the records leading to Annexure A2 and quash the provisions in para 4 (vii) that " 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 purpose of allotment though they will be counted against reserved vacancies".*
- vi. *To call for the records leading Annexure A4, Annexure A4(1) and Annexure A4(2) Cadre Allocation of IAS Officers -2006 and quash to the extent it denied the OBC reservation to the applicant in cadre allotment and her allotment to the Himachal Pradesh cadre.*

5. The 3rd respondent has filed his reply while Union of India has also filed a separate reply. According to the respondents that the applicant

belongs to OBC category who has secured 20th rank in the combined merit list in the Civil Services examination, 2006 has been admitted. It has also been stated that she was taken as general merit candidate and was allocated to IAS. She declared Kerala as her home state and expressed her willingness to be allocated to the IAS cadre of Kerala. There were two vacancies to be filled in the State of Kerala out of which one vacancy was ear-marked for insider and reserved (general) and the other was ear-marked for outsider of OBC candidate. Accordingly, the two posts have been filled up. The fact that the applicant is one among the five candidates who were successful from Kerala State has been admitted. According to Union of India, her allocation to Himachal Pradesh was made strictly in accordance with the cadre allocation policy of Government of India. Having accepted the cadre allocation, the applicant has no locus-standi to challenge the same. The applicant was allocated Himachal Pradesh cadre after consulting, in accordance with Rule 5 (i) of the IAS (Cadre) Rules, 1954, the State Government of Himachal Pradesh, which has conveyed its acceptance of the applicant vide Annexure R-3.

6. As regards reply from the State Government, it has been stated that vacancies to be filled on the basis of Civil Services Examination are determined by Government of India, Ministry of Personnel (DOPT). During the last several years there was no practice of Government of India asking for the comments of the State Government for filling up the direct recruitment quota. Instead, direct recruits are being allotted by Government of India itself. Rule 5 of the cadre rules makes the Central Government as the sole authority.



7. The applicant has filed a rejoinder wherein she has added various annexures regarding number of posts vacant in Kerala. One of them is the communication from the Chief Secretary to the Ministry of Personnel (DOPT), dated 08.04.2008 (Annexure A-11) wherein it has been indicated that the actual requirement of IAS officers in Kerala cadre is 27 in the regular recruitment category. Request was made to the Central Government to provide a maximum number of all officers feasible as there was substantial shortage of officers at the junior level. The applicant has also filed copies of a few orders of this Tribunal as well as judgment of the Hon'ble High Court of Kerala.

8. Union of India has filed its additional reply to the rejoinder wherein it has been stated that cadre allocation for a member of the IAS is an incidence of service and this position has been upheld by the Apex Court in the case of **Rajeev Yadav, 1994 6 SCC 38.**

9. Counsel for applicant laid stress on the point that if the applicant has come in the merit list to be treated as a general candidate but could not be accommodated on account of limited number of vacancies proposed to be filled during 2007, her position is first in the OBC, have been taken into account for allocation of cadre under the outsider quota for the OBCs. From that point of view, the applicant would have easily been accommodated at a vacancy at Maharashtra which has been allotted now to a candidate who is less meritorious compared to the applicant. In other words, the counsel contended that any concession available to OBC candidates should not be denied to the applicant merely because the

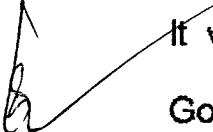
applicant has been found more meritorious and kept at par with general candidate.

10. Counsel for respondents submitted that the cadre allocation has been made strictly in accordance with the rules in extant and as such the applicant who had unconditionally accepted her allocation to Himachal Pradesh cannot now agitate against the same.

11. Arguments were heard and documents perused. First, as to the contention of the respondent that the applicant had accepted the Himachal Pradesh Cadre without any hesitation. In this regard the respondents have referred to Annexure R-1 communication dated 19th July 2007. It is to be seen as to at what stage this acceptance had been obtained. It has been held in the case of *Union of India v. Rahul Rasgotra*, (1994) 2 SCC 600 -

10. The various steps leading to the selection and appointment of a candidate to an All India Service like the Indian Police Service as a result of a combined competitive examination and allocation of the State Cadre to him are these, namely, (i) competitive examination; (ii) selection in the competition and determination of his order of merit; (iii) allocation of the particular All India Service to him based on his position in the order of merit; and (iv) allocation of the State Cadre to him. It is, therefore, obvious that allocation of the State Cadre is made after the stage for allotting the particular All India Service like the Indian Police Service has been made, to the selected candidate.

12. Thus, the acceptance letter given by the applicant is regarding allocation to particular service i.e. I.A.S. and not allocation of the State Cadre to her. The letter dated 19th July 2007 issued by DOPT clearly states, "The cadre allocated to you will be informed to you in due course."

 It was as late as on 13th November 2007 that request of the Central Government to the State Government of H.P. for accepting the cadre

allocation of the applicant was made, vide Annexure R-2 and acceptance by the State Government has been given as late as 17th December 2007. All these are without any choice or preference asked for from the applicant. The applicant has absolutely no knowledge about the same. The Cadre allocation could be ascertained by the applicant by down loading the details, vide Annexure A-4. Thus, it cannot be stated that the applicant had unconditionally accepted the cadre allocation.

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 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.

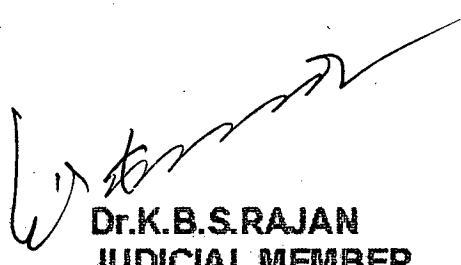
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19. This order be complied with, within a period of two months from the date of communication of this order. If meanwhile the training course is likely to be over, the applicant's posting at Himachal Pradesh shall be treated only as provisional.

20. No cost.

Dated, the 8th July, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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