

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.308/2000

Friday this the 17th day of August, 2001.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE SHRI T.N.T.NAYAR, MEMBER (A)

Sarada Muraleedharan,
District Collector,
Trivandrum, residing at Camp Office,
TC 9/1377,
Gopika, Trivandrum. Applicant

(By Advocate Sri M.R.Rajendran Nair)

vs.

1. Union of India represented by the Secretary to
Government of India,
Ministry of Personnel, Public Grievances and Pension,
New Delhi.
2. State of Kerala represented by the Chief
Secretary to the Government of Kerala,
Trivandrum.
3. State of Madhya Pradesh represented by the Chief
Secretary to Government of Madhya Pradesh,
Bhopal. Respondents

(By Advocate Sri R.Madanan Pillai, ACGSC (R1)
Mr.C.A.Joy, Govt. Pleader (R2)

The Application having been heard on 19.6.2001, the Tribunal
on 17.8.01 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This is the second round of litigation between the applicant and the respondents regarding cadre allocation of the applicant. The applicant Smt. Sarada Muraleedharan hailing from the State of Kerala was recruited to the Indian Administrative Service (I.A.S. - for short) of the 1990 batch. She had opted for allotment to her home State Kerala. However she being No.2 in merit among those recruited from Kerala was allotted to Madhya Pradesh cadre and No.1 Dr. Venu was allocated to Kerala Cadre. In October 1991, applicant got married to Dr. Venu. Applicant and Dr. Venu applied for a transfer to 3rd cadre, but the request was subsequently

withdrawn. Alleging that there had been a lot of backlog of insider vacancies in Kerala Cadre, that before making the order of cadre allotment of 1990 batch of I.A.S., the first respondent did not consult the Kerala State Government and that the insider roster was wrongly applied, the applicant filed O.A.2581 of 1992 before the Principal Bench of the Central Administrative Tribunal challenging her allocation to M.P. cadre by order dated 30th December, 1991 on various grounds. The Tribunal in its interim order dated 1.10.92 directed the respondents to allow the applicant to join Kerala Cadre provisionally treating her as having been allocated to Kerala cadre. In obedience to the interim order, the second respondent, the State of Kerala, permitted the applicant to join Kerala cadre by order dated 5.11.92(A2). The applicant continued in Kerala Cadre on the basis of the said order. Even before this by a letter dated 30th October 1991 the second respondent had requested the 1st respondent that the applicant be allocated to Kerala cadre indicating that there was a short fall of insiders and the State was very particular that the insider outsider ratio of 1:2 be maintained(A3). O.A. 2581 of 1992 was disposed of by the Principal Bench of the Central Administrative Tribunal by order dated 24th October, 1997. The Tribunal rejected the claim of the applicant on the basis of back log of insider vacancy in view of the ruling of the Apex Court in Union of India vs. Mhatun Khatan & ors 1996(10) SCC 562 holding that carry forward of insider vacancy due to non-availability of insider candidates would be contrary to law and that the policy was to ensure that at least 66 2/3% of the officers directly recruited should be

from outside the State and could not be construed to have imposed a ceiling of 66 2/3. However the Tribunal found that there has been no consultation by the Central Government with the State Government before the 1st respondent unilaterally allotted the petitioner to M.P. State without paying any heed to the view point of the State Government of Kerala, that this action of the Central Government violated the mandatory requirement of Rule 5(1) of the I.A.S. Cadre Allocation Rules, 1954 and set aside the order by which the applicant was allocated to the State of Madhya Pradesh. Respondents have been given liberty to pass fresh order after consultation with the State Government in accordance with law. It was also observed that the case of the applicant should also be considered in the light of the instruction of the Government of India contained in the Department of Personnel & Training O.M.No. 28034/2/97 Estt(A) dated 12.6.97 and that the applicant should not be disturbed till appropriate order in accordance with the directions was passed and that subject to the appropriate orders to be passed, the services of the applicant in the State of Kerala should be treated as regular service for all purposes. Though a review application was filed by the 1st respondent, the same was dismissed. Therefore the first respondent has after getting views of the second and third respondents which were in favour of continuance of the applicant in Kerala Cadre issued the impugned order Annexure A1 holding that the applicant continued to be allocated to the State of M.P. and directing the second respondent to relieve the applicant with instruction to report to the third respondent before

31st March, 2000. The present application has been filed impugning the Annexure A1 order, for a declaration that the words "subject to they not being posted by this process to their Home cadre" occurring in O.M. No. of even dated 3.4.1986(A8) is void, and that the applicant is entitled to be allotted to Kerala Cadre of I.A.S. and for direction to the first respondent to allot the applicant to Kerala cadre of I.A.S. or to consider her transfer from M.P.Cadre without imposing the condition contained in Annexure A8.

2. It is alleged in the application that the impugned order, A1 has been passed with a prejudicial mind not paying heed to the opinion of respondents 2 and 3, against the public interest and violating the direction contained in the order of the Tribunal in O.A.2581/92 to have meaningful consultation with the State Government.

3. The respondent No.1 has filed a reply statement and additional reply statement contesting the application, while the second respondent has filed a statement in which it is stated that the 1st respondent did not agree to its request for allotment of the applicant to Kerala Cadre. Third respondent did not file any reply. The first respondent in it's reply contends that the Original Application is not maintainable on the ground of res judicata since the issue has been adjudicated by the Principal Bench of the Tribunal in O.A.2581/92 and that when an order has been passed by the 1st respondent in terms of the directions contained in O.A.2581/92, this Bench has no jurisdiction to entertain an application challenging that order. On merits the first

respondent has raised the following contentions. As there was only one insider vacancy, out of four in the 1990 batch of I.A.S. to be allocated to Kerala Cadre the applicant being second in merit from Kerala was allotted to M.P. Cadre after getting the acceptance of the proposal from the third respondent and the probationers to be allocated to Kerala cadre were also allocated after getting the acceptance of the second respondent and therefore the contention that there was no consultation prior to allocation is not correct. Though in obedience to the directions in the order of the Tribunal in O.A. 2581/92 the views of the second and third respondents were obtained their opinion that the applicant be allocated to Kerala Cadre could not be accepted as the opinion of the respondents 2 and 3 was on extraneous consideration which is not germane for cadre allocation. In view of the ruling of the Apex Court in Rajeev Yadhav's case, the applicant has no right to claim a posting in Kerala cadre. The Central Government is the final authority for cadre allocation and consultation does not mean concurrence and therefore the allotment of the applicant to Kerala Cadre is strictly in accordance with Rule 5(1) of the I.A.S.Cadre Rules,1954. The applicant is not entitled to get transfer to Kerala Cadre as that would be against the policy regarding transfer to third cadre on request consequent on marriage. The application is devoid of merit and is liable to be dismissed.

4. We have gone through the records carefully and have heard Sri Rajendran Nair, the learned counsel of the

applicant, Sri Madanan Pillai, the learned additional Central Govt. Standing Counsel for the respondent No.1 and Sri C.A. Joy, learned counsel, who appeared for the second respondent.

5. Sri Rajendran Nair argued that the plea of res judicata and lack of jurisdiction is without merits as what is challenged is a fresh order, and the applicant stands posted to Kerala for the time being. Sri Rajendran Nair argued that as the allocation of the applicant to M.P. Cadre by order dated 30th December 1991 of the 1st respondent having been set aside by the Principal Bench of the Tribunal in its order in O.A. 2581/92 finding that it was made in gross violation of Rule 5(1) of the I.A.S. Cadre Rules 1954 as there was no consultation of any kind with the State Government, the stand taken by the 1st respondent in the impugned order that the applicant Smt. Sarada Muraleedharan I.A.S.(RR:90) continues to be allocated to the State of Madhya Pradesh as she had been allocated to that State strictly in accordance with the provision of Rule 5(1) of the I.A.S.(Cadre)Rules and the principles of cadre allocation which have been upheld by the Hon'ble Supreme Court is not only untenable but also illustrative of disregard to the binding declaration and direction of the Tribunal because once the allocation to M.P. Cadre has been set aside, it is meaningless to say that the applicant "continues to be allocated to the State of Madhya Pradesh", argued the counsel. Sri Rajendran Nair further argued that the decision contained in the impugned order is arbitrary and irrational as the views expressed in

the matter by the States of Kerala and M.P. have been completely rejected without any consideration with a closed mind thereby reducing consultation to an empty formality. The counsel therefore argued that the impugned order is liable to be set aside and the 1st respondent has to be directed to issue order allocating the applicant as an insider to Kerala Cadre which would serve public interest better as has been opined by the respondents 2 and 3 who are better informed of the requirements of their cadre. Referring to para 11(ii)(c) of the impugned order, the learned counsel argued that what weighed with the 1st respondent in taking a decision even against the plea of the Kerala State that it would be better suited in public interest to confirm the applicant in that cadre was that such a course would negate the effort taken in contesting the case before the Principal Bench and would send a wrong signal and that this is sufficient to expose the negative attitude and a prejudgment of the issue rendering the consultation a mere farce and an empty formality. The learned counsel did not press the prayers in sub-paragraphs (i)(a) and (iii)(a).

6. Sri Madanan Pillai, the learned counsel argued that the allocation of a probationer to a State Cadre under Rule 15(1) of the I.A.S. Cadre Rules 1954 is the prerogative of the Central Government and what is required is only consultation and not concurrence. Since the concerned State Governments have been consulted, the counsel argued that the decision contained in the impugned order Annexure A1 is

unassailable. In view of the decision of the Apex Court in Rajeev Yadav's case, the applicant has no right to claim that she should be allocated to Kerala Cadre and therefore the application has only to be dismissed, argued Sri Pillai. He further argued that the application is barred by res judicata as the issue of allocation of the applicant to M.P. cadre was directly and substantially the issue in O.A. 2581/92 before the Principal Bench of the Tribunal. He also argued that the Bench has no jurisdiction and that any order passed in terms of direction of the P.B. of the Tribunal should have been challenged before that Bench.

7. We shall immediately state that the preliminary objection on the plea of res judicata and want of jurisdiction has only to be mentioned and rejected. What is challenged in the O.A. is the fresh order passed on 7th March, 2000 regarding allocation of the applicant to a cadre and the subject matter of litigation before the Principal Bench was an order passed on 30th December, 1991. The present order passed after consultation with the State Government has not been subjected to litigation anywhere earlier. As the applicant stands posted in Kerala, this Bench of the Tribunal has jurisdiction to entertain this application.

8. Coming to the merits of the case, we find considerable force in the argument of the learned counsel of the applicant that the impugned order is

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arbitrary, unreasonable and made without free and unbiased application of mind. The Principal Bench of the Tribunal had in its order in O.A.2581/92 regarding the impugned order in that case dated 30th December 1991 allocating the applicant to Madhya Pradesh cadre observed as follows:

"10. We are of the considered opinion, therefore, that there was no consultation of any kind, that has taken place in this case and the Central Government has unilaterally issued the order of allocation violating rule 5(1) of the I.A.S. Cadre Allocation Rules 1954, which is on the face of it mandatory."

On the basis of the above finding, the order allocating the applicant to M.P. Cadre was quashed, though liberty was given to the respondents to pass fresh orders after consultation with State Government. This judgment has become final as the review application filed by the 1st respondent was dismissed and the 1st respondent did not carry the matter to any appellate forum. Clause (i) of the last paragraph of the impugned order which reads:-

"(i) the applicant Smt. Sarada Muraleedharaan, I.A.S.(RR:90) continues to be allocated to the State of Madhya Pradesh as she had been allocated to that State strictly in accordance with the provisions of Rule 5(1) of the IAS (Cadre) Rules and the principles of cadre allocation which have been upheld by the Hon'ble Supreme Court".

While the P.B. of the Tribunal has set aside the order allocating the applicant to M.P. Cadre passed by the 1st respondent on 30th December, 1991 finding that "the allocation order passed by the Central Government in the present case is illegal and violative of clause(1) of Rule 5 of the Cadre Allocation Rules 1954.....", the 1st

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respondent is estopped from taking a stand that the applicant had been allotted to that State strictly in accordance with the provision of Rule 5(1) of the I.A.S. (Cadre) Rules. As the allocation to M.P.Cadre has been quashed, there is no meaning in saying that the applicant continued to be allocated to the State of Madhya Pradesh. While holding that the order allocating the applicant to M.P.Cadre Rule 5(1) of the Cadre Rules was violated, the Principal Bench had observed in its order in para 9 that the Central Government without paying any heed to the point of view of the Kerala State that in view of the deficiency of insider candidates in the State Cadre and for other reasons the services of the applicant could be better utilised in the State of Kerala, allotted the applicant to the State of M.P. It was under such circumstances that the Principal Bench in its order in O.A.2581/92 held that there was no consultation. From the impugned order in this case also it is seen that the views of the Kerala State that in the interest of administration of the cadre it was appropriate to allocate the applicant to the Kerala State cadre, has been rejected by the 1st respondent without giving the view the consideration it deserved. Similarly the view of the M.P.Government that it would be in the interest of administration and Cadre management to allocate the applicant in the circumstance of the case, has been totally discarded on the ground that such considerations were extraneous for cadre allocation and that the Central Government has the sole and absolute authority in making cadre allocation. Since the original allocation of the

applicant to M.P.Cadre in December 1991 has been set aside by the P.B. of the Tribunal in its order in O.A. 2581/92, the 1st respondent while it took a decision on cadre allocation of the applicant in our view was obliged to consider the views of the State of Kerala and of the State of M.P. in the matter in the best interest of the two States as also the cadre management, and also the subsequent events especially that the applicant for about a decade has been serving in the State of Kerala and had gained sufficient experience and knowledge regarding the needs of the cadre and the applicant if allotted to M.P. now as a novice would have to start from the beginning which would not be in the interest of the State cadre. The question whether for 1990 batch there was really one more insider roster point against which the applicant could have been allocated or not, should not have been the only consideration to decide about the allocation of the applicant in the facts and circumstances of the case. It is evident from the letter written by the Chief Secretary, Kerala State on 11th October 1991(Annexure RV) i.e., before the impugned order in O.A.2581/92 dated 30th December 1991 allocating the applicant to M.P.cadre was issued that there was deficiency of insider in the cadre and that the State of Kerala had requested that the applicant be allocated to State of Kerala. From the letter written by the Chief Minister of Kerala on 5th January 1991 to the Prime Minister(RIII) it is seen that the State of Kerala was aggrieved that there was a serious omission in consulting the Kerala State before making cadre allocation of 1990

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batch I.A.S.probationers. The requirement of consultation with the State Government which is mandatory as per Rule 5(1) of the I.A.S.Cadre Rules is to serve a useful purpose of ascertaining the requirements and the views of the State Governments. When the State Governments express their views and make demands to meet the interest of the cadre management the Central Government is bound to give the views and demands due consideration and should accede to the demands if that would not be contrary to any rule or public interest. In this case as the State of Kerala as also the State of Madhya Pradesh have, although for different reasons,favoured the allotment of the applicant to Kerala cadre pointing out that a different course would be detrimental to the interest of both these States, we are of the considered view that the decision of the 1st respondent contained in the impugned order to the contrary on the ground that the 1st respondent need only consult and need not obtain concurrence of the State Government for allocation of cadre under Rule 5(1) of the Cadre Rules and that acceding to the request would negate the effort taken in defending the order allocating the applicant to M.P.Cadre before the Principal Bench of the Central Administrative Tribunal in O.A. 2581/92, is arbitrary, unreasonable and opposed to public interest and therefore liable to be struck down.

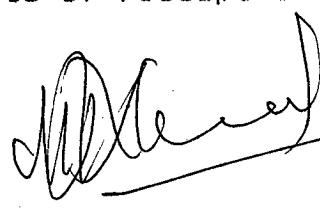
9. In the conspectus of facts and circumstances, as discussed above, we set aside the impugned order and direct

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the first respondent to issue an order allocating the applicant to the Kerala State Cadre of the Indian Administrative Service as an insider of the 1990 Batch within a period of two months from the date of receipt of a copy of this order. No costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

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List of Annexures referred to in the Order:

1. Annexure A1 True copy of the Order No.22012/135/92-AIS(I) dated 7.3.2000 issued by the 1st respondent.
2. Annexure A2 True copy of the Government Order (Rt) No.10010/92/GAD dated 5.11.1992 issued by the 2nd respondent.
3. Annexure A3 True copy of the letter No.99853/Spl A2/91/GAD dated 11.10.1991 sent by the 2nd respondent to the 1st respondent.
4. Annexure A8 True copy of the O.M.No.28034/7/86-Estt(A), dated 3.4.1986 issued by the Joint Secretary to the 1st respondent.
5. Annexure R-III Copy of the Chief Minister of Kerala's letter No.9/CM/91/G1 dated 5.1.1991.
6. Annexure R-V Copy of the Chief Secy. to the Govt. of Kerala's letter No.9983/Spl.A2/91/GAD dated 11.10.1992.