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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1497/95

Date of Decision: 9.7.97

Ms. S.L.Bhutia.

.. Applicant

Shri G.R.Sharma.

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri B.S.Hegde, Member(J)

The Hon'ble Shri M.R.Kolhatkar, Member(A).

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(B.S. HEGDE)
MEMBER (J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1497/1995.

9th, this the Wednesday day of July, 1997.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Ms.S.L.Bhutia,
'Ongmu Khim',
Gangtok,
Sikkim.

... Applicant.

(By Advocate Shri G.R.Sharma)

V/s.

1. Union of India through
the Secretary of
Ministry of Personnel
Public Grievances & Pension,
North Block,
New Delhi.

2. Chief Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

3. Chief Secretary,
State of Sikkim,
Sikkim Secretariat,
Gangtok.

4. Director,
Lal Bahadur Shastri National
Academy of Administration,
Mussoorie.

... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

(Per Shri B.S.Hegde, Member(J))

The applicant had appeared in the Civil Services Examination (for short, CSE) 1991 and on the basis of the said examination she was assigned Rank No.694 in the All India Merit List and she was the last candidate selected for the I.A.S. in that year. The applicant had declared Sikkim as her home state. It is an admitted fact that there was no vacancy to be filled in at Sikkim on the basis of CSE, 1991, as such the applicant and for that matter no one was allocated to that State. In 1991, there was no vacancy in Sikkim and

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for 1992, State of Sikkim through Wireless message dt. 31.7.1992 intimated that they were not willing to take any I.A.S. Probationer in the I.A.S. of Sikkim cadre on the basis of CSE 1992 (Annexure R-5), which is further reiterated by a wireless message dt. 13.8.1992 on the basis of All India Rank she has been allotted the I.A.S. cadre of 'Agmunt' by their Notification dt. 23.12.1992 (Annexure A-1).

2. Being aggrieved by this allocation, she filed this O.A. initially before the Principal Bench, thereafter since the applicant was posted at Goa and with and the consent of the parties, considering the convenience the subject matter was transferred to Mumbai Bench.

3. According to applicant, she is entitled to be allotted to I.A.S. cadre of Sikkim. The contention of the applicant is that since she had declared Sikkim as her home State and also opted for being allocated for her home State in case she is succeeded in the I.A.S. and further the applicant was the only candidate from Sikkim selected for I.A.S. on the basis of the result of CSE 1991, she should have been given the option of posting at Sikkim. In this connection, she made representation dt. 20.4.1993 (Annexure A-5) which has been considered by the Competent Authority and rejected the request of the applicant vide their letter dt. 21.5.1993 (Annexure A-6) for change of cadre stating as follows :

"an 'insider' vacancy in a cadre/joint cadre is filled only if there is such a 'insider' vacancy is available and there is insider candidate available for appointment against that post and also that he/she has expressed his/her willingness to be posted to home state. Even if any one of the three conditions is not fulfilled the insider vacancy is filled by an

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'outsider'. If there is any imbalance in the ratio of 'insider': 'outsider' in the Sikkim Cadre it may be because of one or more of the reasons stated above. Whether any vacancy should be filled in a particular cadre or not is for the Cadre Controlling Authorities to decide. Since there was no vacancy for appointment of direct recruit I.A.S. officer on the basis of CSE 1991 in the Sikkim Cadre the question of allocating you to that cadre on the basis of the CSE 1991 does not arise."

4. We have heard the arguments of learned counsel for the applicant Shri G.R.Sharma and the learned counsel for the Respondents Shri V.S.Masurkar and have considered carefully the pleadings of both the parties. The learned counsel for the applicant Shri G.R.Sharma had drawn our attention stating that the Cadre allocation and the reply of the Respondents (Annexure-6) is not in accordance with the I.A.S. Cadre Rules, 1954 and this needs to be quashed. Secondly, the contention of the Respondent No.1 that Cadre change cannot be effected once either provisionally or otherwise finalised is not correct statement, because Respondent No.2 has no objection if the applicant is allotted to the I.A.S. cadre of Sikkim to make up the deficiency in the insider quota in the said cadre, therefore the impugned notification dt. 23.12.1992 is bad in law. In support of his contention, he relies upon Rule 5 of I.A.S. Cadre Rules, 1954 which reads as follows :

"The allocation of Cadre Officers to various cadres shall be made by the Central Government in consultation with the State Governments concerned... The Central Government may with concurrence of the State Government transfer a cadre Officer from one cadre to another cadre." The counsel for the applicant, therefore urged, that since the respondents have not resorted to any consultation with the State Government as is required under the Rules, the said allocation is to be treated as null and void. In this connection, in support of his contention, he relied upon two decisions of the Supreme Court vis. 1. Chandra Mohan V/s. State of U.P. [AIR 1966 SC 1987] 2. State of Assam V/s. Ranga Muhammed [AIR 1967 SC 903], both the decisions relates to interpretation of Article 233/235 of the Constitution. It is observed that "The exercise of

the power of appointment by the Governor is conditioned by his consultation with the High Court, that is to say, he can only appoint a person to the post of district judge in consultation with the High Court. The object of consultation is apparent. The High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person, belonging either to the "judicial service" or to the Bar to be appointed as a district Judge."

The ratio laid down in the above two decisions are not applicable to the facts of this case. In these cases it is obligatory on the part of the Governor to appoint the District Judges after consultation with the High Court. In the absence of consultation such appointments cannot be upheld. In the instant case the controlling authority is Union of India and as per the policy laid down for the I.A.S. cadre posting and appointment it is a prerogative of the Union of India to allocate candidates according to their merit and the ratio laid down for the policy i.e. 'insider' / 'outsider' quota, the said policy has not been questioned in this O.A. In the instant case the candidates are governed by the policy decision of the Government which are framed in consultation with the State Government and has been approved by the Parliament. Further, he draws our attention to the Chief Minister's letter dt. 10.12.1992 (Annexure R-3) stating that right from 1979 to 1991 no insider have been allocated to Sikkim cadre and in order to maintain the balance of insider and outsider requested the Central Government for allocation of one insider from 1992 batch of I.A.S.

Probationer which has been replied by Minister for
Ministry of
State, ~~Personnel~~, Public Grievances & Pensions
vide letter dt. 16.2.1993 stating that the ~~proposal~~
of allocation of one candidate to the I.A.S. cadre of
Sikkim was turned down by the Govt. of Sikkim vide
their Telex Message dt. 13.8.1992. The cadre allocation
of 1992 batch has since been finalised and communicated
to all the State Governments. In view of this, it is
not possible to allocate any probationer to Sikkim on
the basis of the C.S.E. 1991.

5. The respondents in their reply denied the
various contentions of the applicant and submitted
that I.A.S. Officers are born on State/Joint Cadres.
The candidates recruited through the exam are required
to be allocated to various cadres, this is done by
following set principles and stated that the background
in which the policy has been laid down and followed
strictly in accordance with the policy till now. The
principles has been laid down in the Department's
D.O. letter dt. 30.5.1995 and was laid on the table
of the Lok Sabha. As per the policy there is no
provision of carry forward/filled due to non-
availability of insider ~~candidates~~, which has been
upheld by the Principal Bench, New Delhi in O.A.
No.1623/93 (Mohanjeet Singh V/s. Union of India & Ors.)
(Annexure R-IV). As such she has been allocated
strictly in accordance with the principles of cadre
allocation. Further, allocation of 'insiders' will
be ~~strictly~~ according to their ranks, subject to
their willingness to be allocated to their ~~home~~ State.

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In the instant case the State Government have clearly stated that they would not take any I.A.S. Probationer on the basis of CSE 1991, the question of allocation of the applicant to Sikkim does not arise. It is further denied that the State of Sikkim ever wrote to Respondents to allocate insider from 1992 batch and the issue of notification takes a long time as it is issued only after all the formalities such as verification of character antecedents are verified. There is no provision for carry over of 'insider vacancy' if any such vacancy is not filled due to non-availability of insiders.

6. We have perused the affidavit filed by the R-3, which only states that Sikkim being educationally backward State and no insider has been posted since 1979 there is complete imbalance insofar as the insider quota is concerned. Since the applicant had opted for State cadre of insider quota, she should have been considered for the said quota. In Mohanjeet Singh's case though only one vacancy is reserved for an insider out of 4 vacancies in the State of Punjab, since the applicant happened to be junior to the other persons he could not get insider quota. The Respondents cited two decisions of the Supreme Court viz. 1. Union of India & Ors. V/s. Shri Rajiv Yadav, IAS & Ors. JT 1994 (5) S.C. 541 and 2. Union of India V/s. Mhathung Kithan & Ors. JT 1996 (8) S.C. 499. In both these cases the Apex Court has held that 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

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Government in consultation with the State Government or the State Governments concerned... 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 ^{no legal} under/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 dt. May 31, 1985 shows that the Central Government has always been having guide-lines 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 the same are non-existent 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 years 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. It is needless to mention here that so far as 1991 is concerned there was no vacancy. So far as 1992 is concerned the same was turned down stating that the proposal of allocation of one candidate to the I.A.S. cadre of Sikkim was turned down by the Govt. of Sikkim



and that the letter by the Chief Minister is a belated one, by that time the Central Government had already formulated the allocation of I.A.S. Probationers, though the time gap is only 10 days thereby the question of upsetting entire allocation list was not warranted.

6. In the result, I do not see any merit in the O.A. and the same is dismissed after hearing both the parties. No order as to costs.


(B.S. HEGDE)
MEMBER (J).

B.

(Per M.R. Kolhatkar, Member (A))

7. I am inclined to agree with my learned brother Member (J) that the relief claimed by the applicant of quashing the notification dt. 23-12-1992 at Annexure A-1 to the extent the same allocates the applicant to the IAS cadre of AGMUT and direct the respondents to allocate the applicant to the IAS cadre of Sikkim with all consequential benefits including seniority cannot be granted. However, I am inclined to take the view that the applicant is entitled to the relief in para 8(v) viz. "Pass any other order or direction which this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case." I give below the reasons for the same and also set out the nature of the relief.

8. First of all I want to make certain observations regarding notification dt. 23-12-92 and the correspondence leading thereto. It is seen that the Establishment Secretary, Govt. of Sikkim by his telex dt. 2-5-92 had intimated to Govt. of India ~~that no allotment of probationers should be~~ made during next three years. The Chief Minister wrote letter dt. 10-12-1992 vide D.O. No.225/CMS/92 in which he had requested the Minister of State in the Ministry of Personnel to allot one insider this year from the 1992 batch of IAS probationers. This is a DO letter and it has not been issued from the file; the file number being GEN/EST under which file the telex dt. 2/5/92 was issued. The counsel for the applicant would argue that the notification was issued well after Chief Minister's letter and therefore the Ministry of Personnel ought to have taken into account the request of Chief Minister to allot one insider ^{to Sikkim} ~~from the~~ 1992 batch of IAS. However, the Chief Minister was replied to by the Minister of State in the Ministry under DO letter dt. 16-2-1993 which is numbered as 13013/1/93 AS(1). From the number of letter it is clear that the letter is issued ~~on~~ the file unlike in the case of Chief Minister's letter which was issued from the personal office of Chief Minister. The letter of Minister of State reads as below :

"Kindly refer to your d.o. letter No.225/CMS/92 dated 10.12.92 regarding allocation of one candidate to the I.A.S. Cadre of Sikkim on the basis of the G.S.E. held in 1991.

The proposal of allocation of one candidate to the I.A.S. cadre of Sikkim was turned down by the Govt. of Sikkim vide telex No.2061/ GEN/EST dated. 13-8-92. The cadre allocation of 1992 batch has since been finalised and communicated to all the State Govts. In view of this, it is not possible to allocate any probationer to Sikkim on the basis of the C.S.E.1991. However, considering the request made by you, one candidate will be allotted to the I.A.S.Cadre of Sikkim from 1993 batch (CSE 1992) by following the prescribed procedure."

9. From this it is clear that the Minister of State had referred to the official communication from the Sikkim Govt. dt. 13-8-92 and had pointed out that the cadre allocation had since been finalised and communicated to all the State Govts. and it is not possible to allocate any probationer to Sikkim on thebasis of the C.S.E.1991. There was no follow up on the part of Chief Minister,Sikkim to this letter of Minister of State in the Ministry of Personnel from which it is clear that the letter from Chief Minister is to be treated as a personal communication and that when the Chief Minister's letter was under process, notification for allocation dt. 23-12-92 was already issued. Under the circumstance, therefore, it is not possible to accept the contention of the applicant that there was a change in the official stand of the Sikkim Govt. between August '92 and December,1992. It is also not possible to accept the contention that the allocation was a provisional one and it can be modified nor can the challenge to consultation not being effective

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be accepted because there was a consultation and it was as a result of clear stand of Sikkim Govt. that they did not want allotment of probationers in the next three years that the notification dt. 23-12-92 came to be issued without inclusion of an insider from Sikkim in that notification.

10. It may be noted that the applicant had filed an MP G-1/97 for amendment to the OA which was allowed on 9-4-97 and the respondents were directed to file reply. It was further stated on 10-4-97 that the copy of the amendment was also furnished to counsel for Govt. who was directed to file reply to the amendment by the first week of May, 1997. It was also clarified that failing to file reply the OA would be heard based on available documents. Accordingly the OA was heard on 25-6-97 and the orders were reserved. Unfortunately we notice that the respondents have not bothered to file a reply to the MP. In the amended OA the applicant has pointed out that respondents have permitted cadre change in respect of following officers.

(1) Ms. Matriyie Das (1986) who earlier allocated to Sikkim Cadre was allowed cadre change to Maharashtra Cadre even though she was never trained in either Sikkim or Maharashtra;

(2) Mr. Asghar Hassan Samoon - IAS (1983) who was earlier allocated to Andhra Pradesh Cadre was allowed cadre change from Andhra Pradesh cadre of IAS to Jammu & Kashmir cadre and

(3) Ms. Pallavi Jain - IAS (1995) from Sikkim Cadre to Madhya Pradesh

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cadre though she was trained in Uttarpradesh i.e. altogether in a different state.

The contention of the applicant is that non-granting of request of applicant while granting request of officers similarly situated is clearly discriminatory.

11. The rule position as pointed out in para 4.10 of OA is that Rule 5(2) of IAS(Cadre) Rules 1954 does provide for such a change of cadre. The rule reads as below:

"5. Allocation of members to various cadres -

- (1) The allocation of Cadre officers to various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned.
- (2) The Central Government may, with the concurrence of the State Governments concerned transfer a cadre officer from one cadre to another cadre."

12. I do not see anything from the material on record as to why the request of applicant for change of cadre keeping in view the relevant rules and keeping in view the precedents cited by the applicant cannot be considered by the respondents. I also note that State of Sikkim has filed a supplementary affidavit in which they had taken the stand as below :

"2. that, in a small, socially, economically and educationally backward State like Sikkim, the 'outsiders' and 'insiders' ratio of 2:1 may be impossible to be maintained for years together as is the case today with all officers allocated to Sikkim cadre after 1980 being 'outsiders.'

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3. that in view of the above position, this respondent feels that in the case of States like Sikkim 'insiders' whenever available and who opt for the home State cadre like that of the present applicant, should be allocated to the home state cadre with a view to maintain the 'outsider' and 'insider' ratio formulated by the Central Government and to achieve the rationale behind formulation of the said ratio."

13. I find much substance in the particular contention of the applicant which has also been supported by the stand of the State of Sikkim. I therefore consider that the applicant is entitled to the relief of directing the respondents to have her case for change of cadre considered in accordance with the rules and keeping in view the precedents. The final orders should issue accordingly.

MR Kolhatkar

(M.R.KOLHATKAR)
Member(A)

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The prayer of the applicant for quashing the notification dt. 23-12-92 is liable to be rejected, however the applicant is entitled to the alternative relief of directing the respondents to have her case for change of cadre considered in accordance with the rules and keeping in view precedents. Ordered accordingly.

OA is disposed of in the above terms with no order as to costs.

MR Kolhatkar

(M.R.KOLHATKAR)
Member(A)

B.S.Hegde

(B.S.HEGDE)
Member(J)