

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 769/97.

Date of Decision: 19-01-98

Nilkanth S.Avhad.

Applicant.

Shri M.S.Ramamurthy.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar for official respondents.

Shri A.K.Deshpande for R-5.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice-Chairman,

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?

M.R.Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 769/1997.

Proclaimed this the, 19th day of January, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Nilkanth S.Ahmed,
(I.P.S. - Probationer),
undergoing training at
Sardar Vallabhai Patel
National Police Academy,
Shivarampally,
Hyderabad - 500 252.

.... Applicant.

(By Advocate Shri M.S.Ramamurthy)

V/s.

1. Union of India, through
the Secretary, Government
of India, Ministry of Home
Affairs, North Block,
New Delhi-110 011.

2. The Chief Secretary,
Government of Maharashtra,
Mantralaya,
Mumbai - 400 032.

3. The Chief Secretary,
State of J & K,
Jammu.

4. The Director,
Sardar Vallabhai Patel
National Police Academy,
Shivarampally,
Hyderabad - 500 252.

5. Brijesh Bahadur Singh,
B-14, Manav Seva Nagar,
Seminary Hills,
Nagpur - 440 006.

... Respondents.

(By Advocate Shri V.S.Masurkar
for Respondents No.1 and 2 and
Advocate Shri M.K.Deshpande for
R-5).

O R D E R

¶Per Shri M.R.Kolhatkar, Member(A)¶

The applicant qualified for appointment to
I.P.S. on the basis of the results of the Civil Service
Examination of 1995 and was offered appointment by
letter dt. 20.2.1997 (at Annexure 'B') which the applicant
accepted. The applicant challenges the notification
dt. 18.2.1997 issued under Rule 5(1) of the Indian
Police Service (Cadre) Rules, 1954 allocating the
applicant J & K cadre. The contention of the applicant

is that the applicant ought to have been allocated to the Maharashtra cadre against the 'insider' vacancy on the basis of reservation for 'insider' quota to O.B.C. in accordance with the orders dt. 31.5.1985 of the Ministry of Personnel and Training, Government of India (vide Ex. 'C' page 31). It is further contended that the allocation of R-5 Brijesh Bahadur Singh to Maharashtra cadre as an 'insider' is arbitrary, bad in law and contrary to Government of India orders. The applicant had sent a representation on 26.3.1997 to the Secretary Ministry of Home Affairs (Ex. 'D' page 38) but there is no reply. Hence the O.A.

2. The applicant has therefore prayed for the relief of quashing the orders allocating the applicant to J & K and a declaration that the applicant is entitled to be allocated to Maharashtra cadre and to direct the Respondent No.1 to change the allocation of the applicant from J & K cadre to Maharashtra cadre.

3. The respondents No.1 to 4 are official respondents of whom R-2 to 4 are proforma parties. Respondent No.1, Ministry of Home Affairs, Government of India have filed a written statement. Respondent No.5 (Private Respondent) has also filed a written statement.

4. Both the respondents have raised a preliminary objection that the O.A. does not lie before the Mumbai Bench of the Tribunal. It is contended that the O.A. should have been filed either before the Hyderabad Bench of the CAT, because at the relevant time the applicant was under training with R-4 situated at Hyderabad or at Chandigarh Bench which has the jurisdiction in relation to J & K or the Principal Bench because it has an All India jurisdiction. The applicant has contended

that his case is covered by Rule 6.3 of the Central Administrative Tribunal (Procedure) Rules, 1987, inasmuch as, the relief is sought against the R-5 who is ordinarily a resident in Maharashtra. The respondents, however, have pointed out that Rule 6.3 of the CAT (Procedure) Rules on which the applicant relies has been amended by the notification dt. 11.10.1988.

then

5. The applicant contends that his case can be considered under Rule 6.2 of the CAT (Procedure) Rules, because the applicant is a resident of Maharashtra and belongs to OBC caste of Wanjari and he has appeared for the Civil Service Examination from the State of Maharashtra and his claim is for allocation of Maharashtra cadre on the strength of his being an 'insider' OBC candidate from Maharashtra.

6. We have considered the point of jurisdiction. Rule 6 of the CAT (Procedure) Rules, before it was amended, read as below :

"6. Place of filing applications - The application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction :

- (i) the applicant is posted for the time being, or
- (ii) the cause of action has arisen, or
- (iii) the respondent or any of the respondents against whom relief is sought, ordinarily resides.

Provided that the application may be filed with the Registrar of the Principal Bench and, subject to section 25 of the Act, such application may be transmitted to be heard and disposed of by the Bench which has jurisdiction over the matter."

7. The Rule in the above form was notified by the Notification dt. 6.1.1987 (G.S.R. 17(E)). The same was, however, amended on 11.10.1988 (G.S.R. 1000(E)) para and (iii) of Rule 6 was deleted. The rest of the Rule remained intact. Considering the O.A. from the point of view of amended Rule 6, it would appear that the O.A. is not covered by Rule 6(i) nor is it covered

under proviso to Rule 6. However, the O.A. appears to be covered under Rule 6(ii). It is not disputed that the applicant is an 'insider' OBC candidate from Maharashtra. His grievance is that he ought to be allotted to Maharashtra cadre as an 'insider' OBC candidate. The cause of action has therefore arisen within the jurisdiction of this Tribunal and we reject the objection of the respondents that this Tribunal has no jurisdiction and proceed to consider the O.A. on merit.

8. On merits, both the sides relied on the guidelines relating to cadre allotment contained in Government of India letter dt. 30.5.1985 earlier referred to. As the law turns on these guidelines, the broad principles of the allocation, the same are summarised as below :

- "(1) The vacancies in every cadre will be earmarked for 'outsiders' and 'insiders' in the ratio of 2:1. The break-up of vacancies being 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 cadres between 'outsiders' and 'insiders' will be done in the ratio of 2:1. This ratio will be operationalised by following the cycle 'outsider', 'insider', 'outsider' as is done in the case of general candidates.
- (3) Allocation of 'insiders' will be strictly according to their ranks subject to their willingness to be allocated to their own States.
- (4) Allocation of 'outsiders' will be according to the roster system after placing 'insiders' at their proper places as below :
 - (i) All the State cadres/Joint cadres should be arranged in alphabetical order and divided into four groups.

- (ii) The cycles will be 1-21, 22-42, 43-63 etc.
- (iii) The 'insider' quota should then be distributed among the States and assigned to different cycles of allotment.
- (iv) The 'outsider' candidates should be arranged in order of merit and allotted to the State cadres in cycles.
- (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.
- (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.
- (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.

9. None of the parties disputes the guidelines. on
The difference centers/modality of implementation.

10. The essential contention of the applicant is that the guidelines have not been properly implemented especially in relation to reservation points of the OBCs. At the time, guidelines were formulated, the OBC reservation was not in force, which admittedly came into effect in 1994. It is common ground that there were 5 vacancies in 1995. According to the Respondents three vacancies were for General and 2 for reserved category - 1 for OBC and 1 for SC/ST candidates. The reserved 3 point roster for Civil Services Examination, 1994 had stopped at Insider (SC/ST). Therefore, the reserved 3-point roster for Civil Service Examination, 1995 started from Outsider (2) and the 2 reserved vacancies got distributed as :

a) Outsider (2) (OBC)

b) Outsider (1) (SC/ST) i.e. next cycle.

11. The ~~contention~~ contention of the applicant is that the total reservation for OBC and SC/ST taken together works out to 49.5% of the total vacancies i.e. almost half the vacancies falling every year should go to the members of reserved community in the prescribed percentages. Therefore, out of the 5 vacancies 50% should have gone to the reserved community candidates and the balance to the general community candidates, ^{the extent of} ~~respondents~~ but still ~~they~~ have considered general candidates ~~too~~ 60% of the vacancies arising that year and only two vacancies have gone to the reserved community candidates i.e. 1 SC/ST 'insider' and 1 'Outsider' OBC candidate. Therefore, going by the averment in the said paragraph, ~~so~~ ^{alleges} applicant it is clear that the policy of reservation is not strictly followed by the Respondents while distributing the vacancies among general and reserved community candidates in the Outsider and Insider quota. For the 10th seat last vacancy of 1995 (Insider) General category has a claim of 0.5% and reserved category has a claim of 9.5 % and that claim is of an OBC candidate. So on percentage basis, it is contended that the claim of 9.5% for the tenth seat following all roster and arithmetical calculations Respondent No.5 has a claim of 0.5 for the tenth seat. The allegation is that R-1 has discriminated in allotting R-5 to Maharashtra cadre. For 1995 the contention of the applicant is that the allocation ought to have been as below :

1995

Outsider (OBC)

Insider

Outsider (SC/ST)

Outsider

Insider (OBC)

The contention of the applicant is that the 'insider' slot which has been taken by R-5 as a general candidate ought to have ~~been~~ gone to the applicant as an OBC reserved candidate. The whole dispute centers on this.

12. The respondents have, however, pointed out that reservation for OBC has started from CSE-1994, and the vacancies for OBC and SC/ST @ 27% and 22.5% are calculated separately and cannot be taken together to work out the vacancies, as interpreted by the applicant. The candidates cannot be divided into pieces() and hence it is not possible to allot $2\frac{1}{2}$ General category candidates and $2\frac{1}{2}$ Reserved category candidates to Maharashtra. The Maharashtra State was entitled to have one candidate each in OBC and SC/ST categories. Hence three vacancies were allotted to General category candidates. ~~which would be~~ After 5 years i.e. at the time of CSE-1999, if there would be any gap in the recruitment of OBC candidates due to rounding off/approximation, that would be made good. At present ~~(five years)~~ formula for working out gap in filling up of vacancies is being followed in the case of SC/ST. There is also no provision for clubbing of vacancies of two years as the applicant has tried to do. The Central Government maintains two rosters one for overall vacancies and the other for reserved vacancies. These rosters are maintained cadrewise. According to the roster a candidate of OBC category of CSE-96 is getting an insider slot. The claim of the applicant who belongs to CSE-95 to get an insider slot cannot therefore be sustained. As a matter of history, out of a total of 21 reserved vacancies in Maharashtra Cadre during the last 14 years, 7 were for insiders and 14 were for outsiders. Therefore, the ratio of 1:2 between insiders and outsiders is being maintained

strictly by following the Rule 2 of the Principles of Cadre Allocation. As per the policy of the DOP&T, first available point in the 3-point reserved roster whether it was for outsider or insider, was allotted to the OBC candidate and next point was allotted to SC/ST candidate and the same order has been maintained in the subsequent slots.

13. The respondents have pointed out that the guidelines for cadre allotment have received the judicial sanction vide Union of India V/s. Rajiv Yadav, IAS and Others. (1994) 28 ATC 228. That was a case in which Rajiv Yadav had challenged his allotment to Manipur and Tripura cadre instead of Union Territory cadre which he wanted. His claim was upheld by CAT. While setting aside the findings of the CAT that the letter dt. 31.5.1985 was only an inter-departmental communication, the Hon'ble Supreme Court in its decision dt. 21.7.1994 observed that :

"The letter dt. 31.5.1985 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 years 1966 to 1977 and again it is being followed in practice by Central Government for all these years, is in itself a sufficient publication of its principles.

..... 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 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 dt. 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. 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 categories. 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 among the States. But for the "Roster System" it would be difficult rather impossible for the Scheduled Caste/Scheduled Tribe candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres.

14. The respondents have also relied on the latest Supreme Court decision in *Union of India V/s. Mathung Kithan and Others and Union of India V/s. Kumari Bindhyeshwari Negi and Others* (1997 SCC (L&S)328) decided on 18th September, 1996. In this decision

the rationale of the Rule for the cycle of 2:1 was examined and it was noted that :

"5. Under a policy decision conveyed by the Government of India, Department of Personnel and Training to the Chief Secretaries of all States by a letter dt. 30.7.1984, it was decided that for various reasons set out therein, in order to have a proper balance in the State cadre, the 'outsider' element in the direct recruitment quota was raised to 66-2/3% or in the ratio 2:1 as between outsiders and insiders in place of 1:1. The letter states :

"It is proposed to give effect to this decision by ensuring henceforth at the time of allocating candidates appointed to IAS and IPS on the basis of Civil Service Examination, that at least 66-2/3% of the Officers are from outside the State concerned" (emphasis ours) "

8. In the policy statement of 30.7.1984, a reference was made to the fact that State service officers who get promoted to IAS/IPS

are in the age group of 40 to 50 and that at that late stage, their transfer to another State cadre may give rise to personnel and administrative problems of adjustment. Therefore, in order to restore the outsider-insider balance in a State cadre, it was proposed that the outsider element in the direct recruitment quota required to be increased. In this context it is difficult to accept the contention of the first respondent regarding carry-forward of 'insider' vacancies. The roster is framed bearing in mind this requirement of increasing outsiders in the quota of direct recruits. The policy requires that at least 66-2/3% of the officers who are directly recruited are from outside the State concerned. It does not impose a ceiling of 66-2/3%. The Tribunal was, therefore, not right in disturbing the implementation of this policy as per the roster."

15. The counsel for the applicant would argue that he has no quarrel with the outsider and insider quota, his quarrel is relating to the implementation of Rule of Reservation and according to him, his grievance is that in the year 1995 only two posts have gone to reserved candidates as against 3 posts for general candidates. On this point, the respondents have pointed out that the roster is followed strictly and that since candidates cannot be divided, adjustments are made over a number of years so that the reservation percentage is adhered to.

16. In regard to extent of reservation in any one year, the counsel for R-5 has referred to the decision of the Hon'ble Supreme Court in *Indra Sawhney V/s. Union of India* reported at (1992) 22 ATC 380 especially paras 808, 809 and 814. The same are reproduced below:

"808. It needs no emphasis to say that the principal aim of Articles 14 and 16 is equality and equality of opportunity and that clause (4) of Article 16 is but a means of achieving the very same objective. Clause (4) is a special provision - though not an exception to clause (1). Both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in Article 14. The provision

under Article 16(4) - conceived in the interest of certain sections of society - should be balanced against the guarantee of equality enshrined in clause (1) of Article 16 which is a guarantee held out to every citizen and to the entire society. It is relevant to point out that Dr. Ambedkar himself contemplated reservation being "confined to a minority of seats" (See his speech in Constituent Assembly, set out in para 693). No other member of the Constituent Assembly suggested otherwise. It is, thus, clear that reservation of a majority of seats was never envisaged by the Founding Fathers. Nor are we satisfied that the present context requires us to depart from that concept.

809. From the above discussion, the irresistible conclusion that follows is that the reservations contemplated in clause (4) of Article 16 should not exceed 50%.

814. True it is that the backward classes, who are victims of historical social injustice, which has not ceased fully as yet, are not properly represented in the services under the State but it may not be possible to redress this imbalance in one go i.e., in a year or two. The position can be better explained by taking an illustration. Take a unit/service/cadre comprising 1000 posts. The reservation in favour of Scheduled Tribes, Scheduled Castes and other Backward Classes is 50% which means that out of the 1000 posts 500 must be held by the members of these classes i.e., 270 by Other Backward Classes, 150 by Scheduled Castes and 80 by Scheduled Tribes. At a given point of time, let us say, the number of members of OBCs in the unit/service/category is only 50, a short fall of 220. Similarly the number of members of Scheduled Castes and Scheduled Tribes is only 20 and 5 respectively, shortfall of 130 and 75. If the entire service/cadre is taken as a unit and the backlog is sought to be made up, then the open competition channel has to be choked altogether for a number of years until the number of members of all backward classes reaches 500 i.e., till the quota meant for each of them is filled up. This may take quite a number of years because the number of vacancies arising each year are not many. Meanwhile, the members of open competition category would become age barred and ineligible. Equality of opportunity in their case would become a mere mirage. It must be remembered that the equality of opportunity guaranteed by clause (1) is to each individual citizen of the country while clause (4) contemplates special provision being made in favour of socially disadvantaged classes. Both must be balanced against each other. Neither should be allowed to eclipse the other. For the above reason, we hold that for the purpose of applying the rule of 50% a year should be taken as the unit and not the entire strength of the cadre, service or the unit, as the case may be."

16. We are of the view, that the Supreme Court's observation that reservation percentage is the maximum and not the minimum and that the reservation percentage may be maintained over a number of years by making adjustments, apply to the facts of the present case.

17. In the light of the above discussion, our conclusions are as below :

- (1) The applicant has no right to be allotted to the cadre of his choice or to his home State.
- (2) The decision as to cadre allocation is a prerogative of the Central Government ~~in cadre Rules~~.
- (3) This prerogative is governed by guidelines dt. 31.5.1985 incorporating several rules viz. Rule of Rotation between outsider and insider (2 : 1), Rule of Reservation in favour of SC/ST/^{**}from 1994, in favour of OBC and the rule of merit. These guidelines have received judicial imprimatur in the Supreme Court Judgment in Union of India & Ors. V/s. Rajiv Yadav and Others. which is a three Member Bench Judgment and further in Union of India V/s. Mathung Kithan and Ors.
- (4) These Rules are incorporated in roster system and several variables are adjusted viz. a large number of candidates with their own options, some candidates selected on the basis of reservation system and the different communities for which reservation is made and a large number of state cadres (21). The Supreme Court has observed that the roster system ensures equitable treatment to both the general candidates and the reserved categories.

(5) With the introduction of reservation for OBCs w.e.f. CSE - 1994, the vacancies for OBCs and SC/ST at the rate of 27% and 22.5% are calculated separately and a five year formula for working out in filling up the vacancies is being followed. This modality is entirely ~~unfair~~ reasonable in the circumstances.

(6) The allotment of cadre in terms of roster system is an arithmetical exercise and the same is required to be followed strictly and rigidly and any interference with the roster system is bound to affect the equity of the system as between the general category candidates, reserved candidates and various States.

(7) Any interference with the roster system by breaking the roster and taking up an arbitrarily selected group of years by clubbing together as suggested by applicant reservation percentages for OBCs and SC/ST is bound to result in distortion of roster system and the same is not to be allowed lightly.

(8) No material has been placed before us to show that R-1 has not followed the roster system objectively and rigidly while allotting the applicant to J & K and Respondent No.5 to Maharashtra.

18. We are therefore, of the view, that the O.A. lacks merit and the same is liable to be dismissed.

19. The applicant had sought to rely on the case of Yogesh Deshmukh who was reportedly able to get relief from the CAT, Principal Bench by way of change of cadre by its order dt. 27.11.1997. The Judgment 

in this regard viz. the Judgment in O.A. No.2068/97 on the file of CAT, Principal Bench decided on 7.11.1997 was made available to us after the conclusion of the arguments. We have gone through the same. That was a case in which there was a mistake in the nomenclature of the caste viz., 'kunbi' as an OBC caste to which the applicant belonged; at the time the cadre allocation was made. The applicant came to be allotted West Bengal cadre and the applicant sought the relief of being allotted to the M.P. cadre to an available insider reserved vacancy. In view of the admitted position that the applicant had not been considered in accordance with the roster applicable in the matter of allocation, the relief was granted to consider the case of the applicant for allocation to his home State in accordance with the Rules applicable to allocation by way of roster following the proportion given in that roster on the basis of insider outsider vacancies. Thus the relief was only that of following the roster and nothing more. We are of the view, that Judgment in O.A. No.2068/97 does not help the applicant. The O.A. therefore is dismissed with no order as to costs.

MR Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A)

R. G. Vaidyanatha
19-1-98
(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.