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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 286/97
T.A. No.

199

DATE OF DECISION 12.05.2007

V. Shashank Shekhar

Petitioner

Mr. P.S. Asopa

Advocate for the Petitioner (s)

Versus

Union of India and ors.

Respondent

Mr. S.S. Hasan & Mr. U.D. Sharma

Advocate for the Respondent (s)

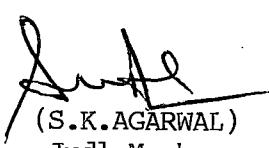
CORAM :

The Hon'ble Mr. S.K. AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P. NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P. NAWANI)
Adm. Member


(S.K. AGARWAL)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 12.05.2000

OA No.286/97

V.Shashank Shekhar S/o Late Dr. V.Venkappa, aged 24 years, r/o A-9, JDA Colony, Malviya Nagar, Jaipur, at present getting training in Nagaland.

.. Applicant

Versus

1. The Union of India through the Secretary, Ministry of Personnel, PG and Pensions, Department of Personnel and Training, North Block, New Delhi.
2. The State of Rajasthan through the Chief Secretary, Government of Rajasthan, Secretariat, Jaipur.
3. Shri Ajitabh Sharma, IAS through Department of Personnel, Secretariat, Rajasthan, Jaipur.

.. Respondents

Mr.P.S.Asopa, counsel for the applicant

Mr. S.S.Hasan, counsel for respondent No.1

Mr. U.D. Sharma, counsel for the respondent No.2

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

The applicant, V.Shashank Shekar, in this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 has prayed that the respondents be directed to consider and allot the applicant his home cadre and further that the undated letter number 13011/6/97-AIS (1) refusing his request for revision of cadre allotment for Nagaland be set aside and quashed.

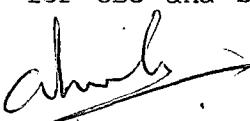
2. The applicant had qualified in the Civil Services Examination, 1995, appointed to IAS as a member of 1996 Batch and allocated to Nagaland Cadre of IAS vide Notification dated 18.11.1996 (Ann.A4). He had obtained the rank of 17 in the said Examination. His declared home State is Rajasthan and he had opted for allocation to his home cadre. One Shri Ajitabh Sharma, respondent No.3, who belongs to OBC category also qualified the same examination, secured 18th rank and expressed his willingness to be considered for allocation to his home State of Rajasthan and



12
was allocated Rajasthan Cadre. The applicant represented (Ann.A5), inter alia, challenging his allocation to Nagaland Cadre which was replied to (Ann.A6), detailing as to how the applicant has been correctly allocated Nagaland Cadre as an outsider. The applicant made another representation dated 17.6.1997 (Ann.A7). In this, quoting the judgment of the Apex Court in Rajiv Yadav's case reported in (1994) 6 SCC 38, he asserted that as per "clause" (vii) of the letter dated 31.5.1985 from Secretary to Government of India, Ministry of Personnel, Shri Ajitabh Sharma having come in the General merit list (and not against a reserve quota) stood at same footing as the applicant and the applicant being placed at Sl.No.17 against Sl.No.18 of Shri Ajitabh Sharma, it is the applicant who should have been allocated to the home State of Rajasthan. It is also contended by the applicant that as per roster system, in the same year, there cannot be reservation for OBC as insider as well as OBC outsider and, therefore, the respondents have committed an error in treating the seat of General outsider candidate as reserved outsider. The respondents have also not disclosed the categorisation of 1996 vacancy for Nagaland. The applicant has referred the case of R.K.Sabharwal, AIR 1995 SC 1371 to support his contention that respondent No.3 is not entitled to take the benefit of reserved category on account of his appointment as General candidate.

3. Respondent No.1, the Central Government, in their reply have essentially defended their actions on the premise that so long as a member of IAS is allocated to a State in accordance with the principles of cadre allocations which have been framed by them in larger public interest and upheld by Hon'ble the Supreme Court, the applicant can have no grievance merely because the cadre to which he has been allocated does not suit him or he has not been allocated his home cadre. The principles have been elaborated in the background note to their reply. However, the controversy raised by the applicant in this case is really limited to the application of para 4(vii) of the letter dated 31.5.1985 addressed to Secretary, Forest by the Secretary Personnel in the matter of treatment of a reserved category officer, who has been appointed to IAS without the benefit of reservation, as far as the allocation of the cadre is concerned.

4. It is admitted that 4 vacancies were to be filled in Rajasthan, out of which 2 were for General candidates and one each for OBC and SC/ST. As per 30 point roster, 2 vacancies were for



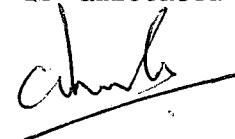
insiders and 2 for outsiders. Of 2 insider vacancies, one each was for General and OBC candidate. The applicant in his rejoinder at para 7 has himself stated that out of 2 insider vacancies the first was for insider Genegal and the second for insider OBC. It is stated by the Central Government that the first General candidate hailing from Rajasthan with rank No.9, Shri Alok Gupta was allocated to Rajasthan and against the OBC insider vacancy, the first OBC candidate hailing from Rajasthan with rank 18, Shri Ajitabh Sharma (respondent No.3) was allocated to Rajasthan, having been given the benefit of his OBC status in the matter of cadre allocation. It has also been stated that as there is no General insider vacancy available in Rajasthan at the turn of the applicant, he could not be allocated to his home State (emphasis added) and was allocated to Nagaland as an outsider, strictly in accordance with the principles of cadre allocation.

5. The applicant has filed a rejoinder to the reply filed by the respondent No.1, the Central Government. He has conceded that the Central Government has a right for cadre allocation but at the same time such right has to be exercised in a fair and proper manner. He has generally reiterated the averments made in the OA but has stressed that the respondent No.3, a person from OBC category, had been appointed to IAS as a General candidate and since he stood at rank No.18, the applicant with rank No.17 has a preferential right over him. It has also been mentioned that though there was only one General insider vacancy in Rajasthan but another vacancy has been created for OBC in outsider quota in order to help respondent No.3 and the said action of respondents is highly arbitrary, unjustified and against the provisions of Article 14 and 16 of the Constitution of India.

6. In their reply, respondent No.2 i.e. the State of Rajasthan have basically stated that they are not concerned with cadre allotment and have unnecessarily been impleaded as one of the respondents.

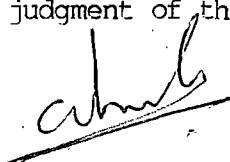
7. We have heard the learned counsel for the parties and carefully examined the material on record. The learned counsel for the parties have essentially expanded the averments made during their arguments.

8. Respondent No.1 has contended that so long as a member of IAS is allocated to a State in accordance with principles of cadre



allocation framed by them in larger public interest and upheld by Hon'ble the Supreme Court, the applicant can have no grievance merely because the cadre to which he has been allocated his home cadre. There is also no doubt that Rule 5 of the Indian Administrative Service (Cadre) Rules (for short Cadre Rules) provides that the allocation of the members of various cadres shall be made by the Central Government. Further, the Apex Court itself in the case of Rajiv Yadav has observed that "the Central Government is under no legal obligation to have options or even preferences from the officers 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 principles of allocation as contained in the letter dated 31.5.1995 are, however, designed with an extremely important objective, which is that the power available to the Central Government should be exercised in a just, impartial and non-discriminatory manner within the bounds of guiding principles contained therein so that there arise no occasions that the Central Government is accused of acting in a arbitrary, whimsical, unjust or partial manner. It, therefore, follows that if it appears that in any particular case, there is violation of the principles or policy laid down by the Central Government itself, this Tribunal certainly would be justified in intervening in the matter. We, therefore, proceed to examine whether allocation of State cadres to the applicant and the respondent No.3 have been done strictly in terms of the principles of allocation.

9. There is no dispute about the broad principles of allocation (to State cadres) on the basis of roster system as contained in the semi-official letter dated 31.5.1985 from Secretary to Government of India, Ministry of Personnel to Secretary to Government of India, Department of Forest and Wild Life which has been reproduced in the judgment of the Apex Court in the case of Union of India and ors. v. Rajiv Yadav, IAS and Ors. reported in (1994) 6 SCC 38. These principles have been, inter alia, held constitutional in the said judgment. Respondent No.1 has not, and could not have, contended that these principles were not applicable in the controversy raised in this OA. It will be useful to extract hereunder these "principles of allocation" as contained in the judgment of the Apex Court in the case of Rajiv Yadav:



"The broad principles of allocation on the basis of roster system would be as follows:

(1) The vacancies in every cadre will be earmarked for 'outsiders' and 'insiders' in the ratio of 2:1. In order to avoid problems relating to fractions and to ensure that this ratio is maintained, over a period of time, if not during every allocation, the break-up of vacancies in a cadre between 'outsiders' and 'insiders' will be 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 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.

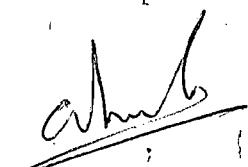
(3) Allocation of 'insiders', both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States.

(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:

(i) All the State Cadres/Joint Cadres should be arranged in alphabetical order and divided into four groups which, on the basis of the average over a period of time, are taking roughly equal number of candidates each. On the basis of average intake during the last 4 years, the groups, could be as follows:

Group I : Andhra Pradesh, Assam-Meghalaya, Bihar and Gujarat.

Group II : Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala and Madhya Pradesh.



Group III: Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim.
Group IV : Tamil Nadu, Union Territories, Uttar Pradesh and West Bengal.

(ii) Since the number of Cadres/Joint Cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on.

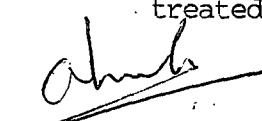
(iii) The 'insider' quota should then be distributed among the States and assigned to different cycles of allotment. For example, if a State gets 4 'insider' candidates, they should go to the share of the State in their respective cycles and if there are 2 'insider' candidates from the same cycle, they should be treated as going to the State in two successive cycles and so on.

(iv) The 'outsider' candidates should be arranged in order of merit and allotted to the State cadre in cycles as described in (v) below.

(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. The process should be repeated in successive cycles, each successive cycle beginning with the next successive group of States, e.g., the second cycle should begin from Group II States, the third cycle with Group III States and the fourth cycle with Group IV States and the fifth cycle again with Group I States. Occasionally, it may happen that a candidate's turn may come in such a way that he may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

(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, i.e. the arrangement will begin with Group II on top. In the third year, Group III will come on top and so on.

(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



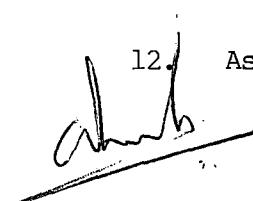
allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details should be followed. If there is a shortfall in general 'insiders' quota it could however be made up by 'insider' reserved candidates".

10. A plain reading of the sub-para (vii) of para (4) will indicate that it has specifically been provided that in the case of such candidates belonging to the reserved categories, whose position in merit 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 the purpose of allotment. This provision in absolutely clear terms, provides that a reserved category candidate in the matter of allocation of State cadre if such candidate had obtained such merit that he could be appointed to IAS even without the benefit of reservation is required to be treated as a General category candidate. It is thus clear that respondent No.3, who otherwise, belongs to a reserved category (OBC), secured rank No.18, a rank such that he could be appointed to IAS without the benefit of reservation has to be treated as a General category candidate in the matter of allocation of cadre.

11. In view of discussions recorded so far and the pleas raised and arguments advanced by the learned counsel for the parties, we can frame following three issues:

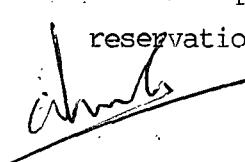
- i) Whether the applicant should have been allocated his home State of Rajasthan as an insider candidate ?
- ii) Whether respondent No.3 was wrongly allocated to Rajasthan as an insider OBC candidate and his rank being lower than that of the applicant, it should have been the applicant who should have been allocated Rajasthan cadre ?
- iii) Whether letter No.13011/6/97-AIS(1), date not given (Ann.A6) from the Department of Personnel and Training (for short DOPT) refusing the request of the applicant for revision of his cadre from Nagaland should be set aside and quashed and directions be given for allotting the applicant Rajasthan or any other cadre ?

12. As far as the first issue is concerned, it is admitted that



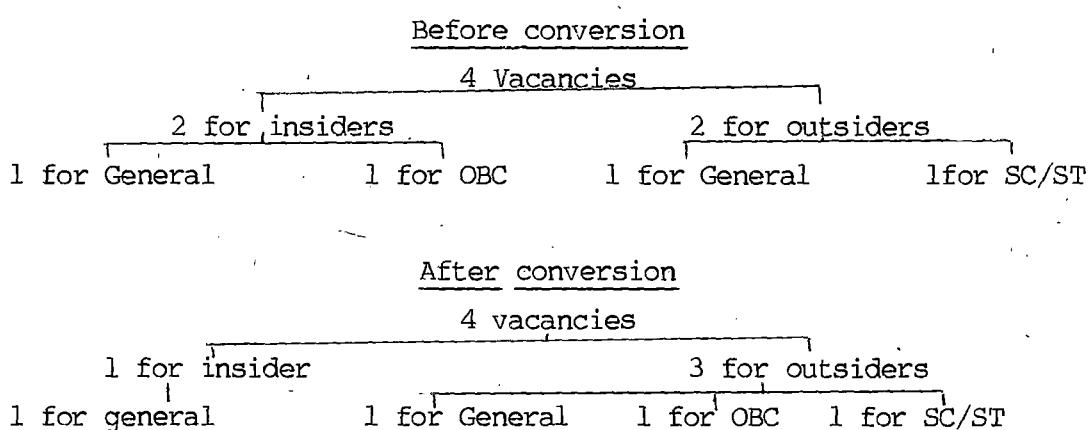
of the four vacancies for Rajasthan, two were for insiders and of these two, only one was for General category candidates. Para (3) of the letter dated 31.5.1985 incorporating the "principles of allocation", as extracted under para 9, clearly stipulates that the allocation of insiders will be strictly according to their ranks, subject to their willingness to be allocated to their home State. Both the applicant and respondent No.3 were admittedly insiders and had expressed their willingness to be allocated to their home State. Thus they were equally placed till now. However, there being only one vacancy, only one General category insider candidate had to be allocated this vacancy strictly according to higher rank. Shri Alok Gupta had secured the 9th rank and the applicant the 18th rank. The only insider General vacancy had to be, therefore, allocated to Shri Alok Gupta. The applicant with the much lower rank of 18 could in no way, lay his claim to the only General insider vacancy. We have satisfied ourselves not only from the averments and argument but also from the enclosed statements, especially Ann.R2, that there was only one insider General vacancy. This is what the applicant has also himself mentioned in para 7 of his rejoinder. The second General category vacancy was for outsiders and the applicant could not have been considered against it as an insider General category candidate. Thus, unless there was another General category insider vacancy, the question of consideration of the applicant for allocation to his home state as General category candidate just did not arise. Whether respondent No.3 was to be considered as an OBC or a general category insider candidate would make no difference when there was no second General category insider vacancy. The fact remains that there was only one General category insider vacancy, which has rightly gone to Shri Alok Gupta with an admittedly high rank than the applicant. In view of this, in our considered opinion, the first issue has to be answered in negative.

13. As far as the second issue is concerned, we are required to examine the distribution of the four vacancies for Rajasthan cadre before we can answer it. It may, however be mentioned straightaway at this juncture that unless the distribution was so altered that it resulted in availability of a second General category insider vacancy in place of the OBC category insider vacancy, the applicant can still have any claim for consideration for allocation to his home State. During our examination, we will also consider the plea of the applicant that under the roster system, there cannot be reservation for OBC as insider as well as OBC outsider when there

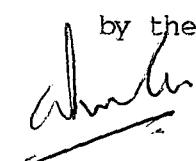


(19)

are only 4 vacancies, which having been done by the respondents has resulted in 2 vacancies for OBC. It has become necessary to carry out a detailed examination because as stated by the respondent No.1 at the bottom of page 17 of their reply that "It may also be clarified that only insider OBC vacancy has been converted into outsider OBC vacancy and the community-wise break up has not been changed or disturbed". It appears to us that the earlier and subsequent (after the said conversion) distribution of 4 vacancies can be better illustrated with following diagram:



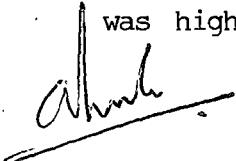
From the above diagram, it transpires that, as claimed by the respondent No.1, the community wise distribution has not been changed or disturbed by the conversion of one insider OBC vacancy into outsider OBC vacancy. More importantly for the applicant, a second General category insider vacancy has not materialised, against which the applicant could by a claim in preference to respondent No.3 by virtue of higher rank. It can also be noted that the conversion has not resulted in 2 vacancies of OBC and his pleas in this regard have to be rejected. The applicant has neither in his averments in the application nor in his rejoinder specifically challenged the powers of the Central Government to carry out such a conversion on the touchstone of the provisions contained in the letter dated 31.5.1985, incorporating the principles of allocation. Although the averments of the respondent No.1 are not very precise on this point, it is quite apparent that the respondent No.3 has been allocated the State cadre of Rajasthan as an outsider candidate because it seems that as per the roster system Ann.R-II prepared on 4.11.1996, in the second cycle of General category vacancies, Sl.No.19 shown under Col. 7 was to be allocated against the second General category vacancy for Rajasthan. It is seen from the Master statement which is part of the Annexure R-II, that the result of the candidate at Sl.No.12 (rank No.11A) has been withheld by the UPSC and, therefore, the Sl.No. of respondent No.3 with rank



18, has been written as 19 and thus having Sl.No.19 he was apparently allocated to Rajasthan against second cycle for General category candidates as shown in the tabular roster statement at Ann.R-II. The tabular roster statement at Ann.R-II has also not been challenged by the applicant even in his rejoinder and we have to, therefore, hold that respondent No.3 has been correctly allocated to Rajasthan as a General outsider which also satisfies the requirement of para 4(vii) of the letter dated 31.5.1985 that a reserved category candidate, whose position in the merit list is such that he would have been appointed to service even in the absence of reservation, will be treated at par with the General candidates for the purpose of allotment of cadre. That the respondent No.3 happens to belong to the OBC category does not make any difference. Some element of luck is inherent in the roster system, upheld by the Apex Court, and having not been able to get the only general category insider vacancy for allotment of his home State because of a higher ranked General insider candidate, the applicant was 'unlucky', and we use this word very reluctantly, to have been allocated to Nagaland as an outsider. The second issue is also, therefore, replied in the negative.

14. As regards the third issue, the Central Government has categorically stated that the applicant has been allocated to the cadre of the State of Nagaland strictly according to the principles of cadre allocation. As we have already mentioned, once the applicant could not get his home State of Rajasthan as an insider, he got allocated to Nagaland as an outsider under the roster system. In their reply to para 4.10. of the OA, the respondent No.1 in their reply at internal pages 12 to 15 have explained the cadre allocation of the applicant among others. We have perused it and we find no infirmity in the explanation. It is also supported by the tabular roster statement at Ann.R-II where in Sl.No.18 comes in the first cycle of general vacancies and the applicant with Sl.No.18 in the Master Statement enclosed with Ann.R-II gets allocated to Nagaland. While negativing the issue number three, we hold that we find no justification for setting aside and quashing the letter No.13011/6/97-AIS(1) and issuing any directions to the respondents.

15. The learned counsel for the applicant has sought support from certain judgments and supplied us photocopies of the same. We have carefully perused these. In 1990 (3) CAT 507, Miss Ravneet Kaur, IAS Probationer v. Union of India and ors., the applicant therein was higher in merit but the insider vacancy was earmarked for a



member of the Scheduled Caste. The present case is distinguishable since, there was only one General category insider vacancy and by conversion, no additional reserved category vacancy was created added and there was no violation of allocation of the insider vacancy and, therefore, we feel that the case cited does not help the applicant. The learned counsel for the applicant has also given the photocopy of the judgment of the Apex court in the case of Union of India v. Mhathung Kithan and ors., reported in 1996(8) Supreme 187 but we find that the case related to carry over the insider vacancy and any plea of the applicant that an insider candidate from Nagaland should be allocated to Nagaland against a carry over reserved vacancy is not relevant to the present controversy.

16. In view of the discussions recorded hereinbefore, we arrive at the considered conclusion that there is no justification for us to direct the respondents to allocate to the applicant his home cadre of Rajasthan and quash and set aside the undated letter No. 13011/6/97 -AIS (1) (Ann.A6).

17. The Original Application is accordingly dismissed. Parties to bear their own costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member