

FROM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No: _____

Misc Petition No: _____

✓ Contempt Petition No: 50 / 2003 (O.A-91/2002)

Review Application No: _____

Applicants:- Sri J. S. Rao

Respondents:- S. S. Datta
Sri Arun Bhattacharya

Advocate for the Applicant:- Mr. K. N. Chaudhry, I. Chaudhry
Ms. R. S. Chaudhry

Advocate for the Respondents:-

Notes of the Registry Date

Order of the Tribunal

30.10.2003

Heard Mr. I. Choudhury, learned counsel for the applicant.

Issue notice on the respondents to show cause as to why contempt proceedings against the alleged contemnors as prayed for, shall not be initiated, returnable by four weeks.

List the case on 3.12.2003.

Vice-Chairman

bb

24.12.2003

Present : The Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman.

The Hon'ble Mr. K. V. Prahladan Member (A).

Let the matter appear on 9.1.04 for orders.

Member

Vice-Chairman

mb

9.1.2004

List it on next Division

Bench.

tion
ondent.

322

1-11-03

mb

K.V. Prahladan
Member (A)

27.2.2004 Present: Hon'ble Shri Shanker Raju,
Judicial Member

Hon'ble Shri K.V.
Prahladan, Administrative
Member.

Despite opportunities respondents have failed to file reply. The direction to consider the applicant allotting him home State as OBC quota holder has not been implemented. Taking a very serious view of this, we accord the respondents four weeks further time to comply with the direction or to apprise about the latest position including the steps taken towards implementation of the judgment.

It is found that despite notices none has appeared for the respondents.

List on 30.3.04.

K.V. Prahladan
Member (A)

Member (J)

nkm

No reply has
been filed.

By
29.3.04

Corrected The name
The Contemner vide
order dt. 24.12.03
passed in M.P. 124/03
and copy of the apphit
and order have been
sent to the D/H.C. for
effluent the rule to the
new Contemner by
post. Order No-2322

dated

Received copy
By
7/1/04

Order dt. 27/2/04
Sent to D/section
for issuing to the
both parties.

By
27/2/04

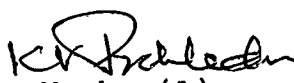
30.3.2004 Present : The Hon'ble Shri Kuldip Singh, Member (J)

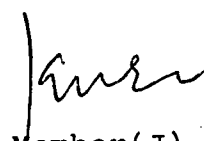
The Hon'ble Sri K.V.Prahladan, Member (A)

Heard Mrs R.S.Choudhury, learned counsel for the petitioner.

O.A.91/02 was decided by this Tribunal with a direction to revise the allotment order to the OBC 'insider' vacancy for 1996-97 in respect of Andhra Pradesh Cadre and to consider the case of the applicant for allotment in his home State as a OBC quota holder in the light of the observations made in the order within three months from the date of receipt of the order. This order was passed as long back as on 20.6.2003. No steps has since been taken by the respondents.. regarding the direction given by this Tribunal. Notices had been issued vide order dated 27.2.2004 to the respondents for compliance with a direction to apprise about the latest position including the steps taken towards implementation of the judgment. However, no one appeared despite service of the notice on the respondents. In this view of the matter respondent No.1 is directed to personally appear before this Tribunal on the next date. However, in case any compliance is made to the order the personal appearance of respondent No.1 will be exempted.

List before next available Division Bench.


Member (A)


Member (J)

1.4.2004 Present: Hon'ble Shri Kuldip Singh
Judicial Member

Hon'ble Shri K.V. Prahlada,
Administrative Member.

Learned counsel for the respondents informed that though the Court had directed for personal appearance of respondent 1, but since there is already a stay of the order from the High Court which could not be brought to the notice of the Tribunal on the day the matter was taken up, the personal appearance of respondent 1 may be exempted. Accordingly we direct that the personal appearance of respondent 1 need not be pursued at present.

Order dated 1/4/04
sent to D/Section
for issuing to
both the parties.

(Cus)
18/5/04.

29.9.04

No reply has
been filed.

Member (A)

Member (J)

nkM

30.9.2004 Present: The Hon'ble Mr. Justice R.K. Batta,
Vice-Chairman.

The Hon'ble Mr. K.V. Prahladan,
Member (A).

Heard Mr. Gautam Rahul, learned counsel for the petitioner. None present for the respondents.

On 1.4.2004, it was stated that there is a stay order of the Hon'ble High Court in the matter. Hence the matter be listed after ^{final} orders are passed on the ^{matter} stay order by the Hon'ble High Court. Parties to file copy of the order when passed.

Member (A)


Vice-Chairman

bb

CP 50-03 (OA 91/2002)

14.09.2010

Mrs.R.S.Choudhury, learned counsel
appearing for applicant seeks to withdraw
present CP. Dismissed as withdrawn. Notice is
discharged.


(Madan Kumar Chaturvedi)
Member (A)


(Mukesh Kumar Gupta)
Member (J)

/bb/

উপাধী প্রশাসনিক আদালত
Central Administrative Tribunal

OCT 2003

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

CONTEMPT PETITION NO. 50 /2003

IN

O.A. NO. 91/2002

IN THE MATTER OF :

Sri Jam Jamsyamala Rao

... PETITIONER

-VERSUS-

Union of India .

... ALLEGED CONTEMNERS.

IN THE MATTER OF :

A petition under section 17 of the Administrative Tribunals Act, 1985 praying for initiation of a contempt proceeding against the alleged Contemnors for non-compliance of the Judgment and Order dated 20.06.2003 passed in O.A. No. 91/2002.

-AND -

IN THE MATTER OF:

Jam Jamsyamala Rao
S/O Late J. Satyanarayan Murthy,
Chief Executive Officer,
Guwahati Metropolitan Development
Authority,
Bhangagarh, STATEFED Building,
Guwahati -5

.... PETITIONER.

-VERSUS-

Filed by
The Petitioner

through

MR. INDRA NEEL CHAUDHURY
A DVOCA TC.

29/10/03

Sri Arun Bhattacharya
Secy to the Govt of India,
Dept. of Personnel &
Training, Ministry of
Personnel, Public
Grievances and Pension
North Block, New Delhi
Impleaded as a alleged
contemner vide order
D.O. 24.12.03 passed in
M.P. 124/03.

1. Sri S. S. Dasgupta

Secretary to the Govt. of India,
Department of Personnel & Training,
Ministry of Personnel, Public
Grievances and Pension,
North Block, New Delhi - 1.

... OPPOSITE PARTY/
CONTEMNER.

The humble petition of the petitioner above named:

MOST RESPECTFULLY SEWETH:

1. That the petitioner is citizen of India and as such is entitled to all the rights, privileges and protections guaranteed to the citizen of India under the constitution of India and the laws framed thereunder:
2. That the petitioner belongs to the 1997 batch of IAS Officers and belongs to the OBC category. On being successful in the Civil Services Examination, the petitioner was allotted the Assam - Meghalaya Joint Cadre and he accordingly joined at his place of posting. However, since the Cadre allotment of the petitioner was not as per the Rules and Guidelines in force, the petitioner filed a representation before the Department of Personnel and Training (hereinafter referred to as DOPT) on 17.03.2003, for allotting him his home cadre of Andhra Pradesh. However, the Under Secretary to the Government of India DOPT rejected the said representation, vide letter under Memo No. 13011/17/98-AIS (I) dated 22.09.1998.
3. That being aggrieved by the above decision of the DOPT, the petitioner filed an Original Application before this Hon'ble Tribunal praying inter-alia for a direction to the DOPT to change the petitioner's Cadre to Andhra Pradesh. The said Original Application was registered as O.A. No. 1/99 and this Hon'ble Tribunal vide Order dated 29.03.2001 was pleased to set aside the Order dated 22.09.1998 of the DOPT and further directed the authorities to re-consider the cadre allocation of the petitioner in accordance with the observations made by the Hon'ble Tribunal therein.

4. That however, the authority concerned instead of re-considering the representation of the petitioner for Cadre allotment, once again vide Order under Memo No. 22012/15/99-AIS (I) dated 10.09.2001 passed a speaking order and rejected the claim of the petitioner for Cadre allotment to Andhra Pradesh, on the same grounds which were examined and rejected by the Tribunal.
5. That the petitioner therefore was once again constrained to approach this Hon'ble Tribunal by way of an Original Application, which was registered and numbered as O.A. No. 91/2002. This Hon'ble Tribunal after hearing the parties at length was pleased to allow the application and directed the Respondents to revise the allotment order in respect of Andhra Pradesh Cadre and to consider the case of the applicant for allotment in his home State of Andhra Pradesh as an OBC quota holder in the light of the observations made therein, within a period of three months from the date of receipt of the order.

A copy of the said Judgment and Order dated 20.06.2003 is annexed herewith and marked as ANNEXURE - A.

6. That immediately thereafter the petitioner obtained a certified copy of the said order and vide representation dated 25.06.2003 forwarded a copy of the same to the Opposite Party herein.

A copy of the representation/letter dated 25.06.2003 alongwith a copy of the postal receipt issued by the G.P.O., Guwahati are annexed herewith and marked as ANNEXURE - B & C respectively.

7. That the petitioner humbly states that despite the elapse of more that 4 months, there has been no positive response forthcoming from the Opposite Party/Contemner, which amounts to willful and deliberate non-compliance of the direction issued by this Hon'ble Tribunal vide order dated 20.06.2003.
8. That the deliberate inaction on the part of the Opposite Party in not allowing the petitioner the Andhra Pradesh Cadre despite the elapse of more than 4 months, amounts to contempt of the Orders issued by this Hon'ble Tribunal and lowering the dignity of this Hon'ble Tribunal. As such this is a fit case to initiate a proceeding under Section 17 of the Administrative Tribunals Act, 1985 against the Opposite Party and further be pleased to impose punishment against the

alleged Contemner for willful violation of the Order of the Hon'ble Tribunal in accordance with law.

9. That the petitioner humbly and respectfully states that the directions issued by the Hon'ble Tribunal vide Order dated 20.06.2003, can in no way be termed as ambiguous and infact were extremely specific in their intent and as such non-compliance of the same by the opposite party amounts to an act within the meaning of Section 17 of the Contempt of Courts Act. This Hon'ble Tribunal will as such take appropriate measures to punish the opposite party in accordance with law.
10. That this petitioner if filed bonafide and for the ends of justice.

Under the facts and circumstances stated above, the Hon'ble Tribunal be pleased to initiate contempt proceeding against the alleged Contemnners for willful non-compliance of the order dated 20.06.2003 passed in O.A. No. 91/2002 and further be pleased to impose punishment upon the alleged Contemnners in accordance with law and further be pleased to pass any such other order or orders as deem fit and proper by the Hon'ble Tribunal.

And for this act of kindness the applicant as in duty bound shall ever pray.

Affidavit

AFFIDAVIT

I, Shri Jam Jamsyamala Rao S/O Late J. Satyanarayan Murthy, aged about 34 years working as Chief Executive Officer, Guwahati Metropolitan Development Authority, Bhangagarh, Guwahati -5, Assam do hereby solemnly declare as follows :-

1. That I am the petitioner in the above contempt petition and as such I am well acquainted with the facts and circumstances of the case and also competent to sign this affidavit.
2. That the statement made in para 1 to 10 are true to my knowledge and belief and I have not suppressed any material fact.
3. That this affidavit is made for the purpose of filing contempt petition before the Hon'ble Central Administrative Tribunal, Guwahati Bench for non-compliance of the Hon'ble Tribunal's order dated 20.06.2003 passed in O.A. No. 91/2002.

And I sign this Affidavit on this 29th day of October, 2003.

Identified by

Rakhee Sinauthie Chowdhury

Jamsyamala Rao
DEPONENT

Advocate's ~~seal~~

Solemnly affirmed and declared before me
by the deponent who is identified by
me, Rakhee Sinauthie Chowdhury Advocate on this
the ...29th... day of October, 2003.

DRAFT CHARGE

Laid down before the Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati for initiating a contempt proceeding against the alleged Contemnners/Respondents for willful and deliberate non-compliance of order of the Hon'ble Tribunal dated 20.06.2003 passed in O.A. No. 91/2002 and further be pleased to impose punishment upon the alleged Contemnners/Respondents for willful deliberate non-compliance of order dated 20.06.2003 passed in O.A. No. 91/2002.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
O.A. NO. 91 OF 2002

Present : Hon'ble Mr. Justice D.N.Chowdhury, Vice-Chairman
Hon'ble Mr. S. Biswas, Member (A)

J. Shyamala Rao, IAS, Staff Officer
to the Chief Secretary & Deputy
Secretary (Home & Political),
Assam Secretariat (Civil), Dispur,
Guwahati-6

VS

1. Union of India through the Secretary,
Deptt. of Personnel & Training,
M/o Personnel, Public Grievances &
Pension, North Block, New Delhi
2. The Chief Secretary, Govt. of Assam,
Dispur, Guwahati-6
3. The Chief Secretary,
Govt. of Andhra Pradesh,
Hyderabad
4. Sri N. Sridhar, IAS, Project Officer,
Integrated Tribal Development Agency,
Utmoor, Adilabad Anheri,
Andhra Pradesh.
5. Sri Sailya Ramaieyer, IAS,
Project Director, Drought Prone Area,
Programme, C/o Collector, Shaty Bhawan
Lakaria Pool Range Reddy Dist.
Andhra Pradesh
6. Ahmed Nadeem, Project Director,
C/o Collectorate, Dist. Rural
Development Agency, Machili Pattanam,
Krishna District. Andhra Pradesh.

For the applicant : Mr. B.K.Sharma, Counsel
Mr. P.K.Tiwari, Counsel
Mr. S. Sarma, Counsel

For the Govt. respondents: Mr. A. Deb Roy, Sr. CGSC
Mr. R. Sharma, Addl. CGSC

Date of order : 20.6.03

ORDER

S. Biswas, A.M.:

This is the second time, the applicant, who is an IAS Officer of Assam-Meghalaya cadre, and currently working as Dy. Secretary under the Govt. of Assam, has approached this Tribunal challenging the speaking order dt. 10.9.01 passed by the respondent No. 1 in

[Signature]
S. Biswas

compliance with the direction of this Tribunal dt. 29.3.01 in an earlier OA being OA No. 1 of 1999 filed by the same applicant. By this speaking order, the representation of the applicant for allotment to his Home State cadre i.e. Andhra Pradesh cadre on his selection to IAS on the basis of Civil Service Examination, 1996 has been reconsidered and turned down for the reasons mentioned therein.

2. In order to understand the grievance of the applicant, it will be useful to state very briefly the facts at the outset.

2.1 The applicant hails from the State of Andhra Pradesh and belongs to OBC category. He appeared in the Civil Service Examination (CSE) 1996 for selection to IAS as direct recruit. During the relevant year, there were in all five vacancies in the State of Andhra Pradesh for intake of direct recruits on the basis of CSE, 1996. Incidentally, seven candidates hailing from Andhra Pradesh qualified in the 1996 Examination. Their names, status and rank are given below in order to understand the incidence of the grievance :-

	<u>Name</u>	<u>Status</u>	<u>Rank</u>
1.	Pamu Sampath Kumar	SC	5
2.	N. Sridhar (Res. 4)	OBC	29
3.	Shailaja Ramaiyer (Res. 5)	UR	31
4.	Jamjam Syamala Rao (Applicant)	OBC	34
5.	Shyam Jagannathan	SC	63
6.	Shasidhar Srinivas K	SC	267
7.	P. Krishnamurth	SC	336

2.2 Out of the aforesaid seven selected candidates, Sl. No. 1, whose rank was at Sl. No. 5 of the select list, did not opt for his Home State and the rest opted for their posting in their Home State.

2.3 Under Rule 5 of the IAS (Cadre) Rules, 1954, the allocation of selected candidates to the various State cadres is to be made by the Central Govt. in consultation with the State Govt. concerned. For this purpose, Govt. of India issued a policy guidelines dated 30-31 May, 1985 elaborating the mode of allocation of the direct recruits to the All India Services including IAS. According to this policy guideline, a roster system is followed for allocation in different zones comprising various states keeping in view the rank and

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preference of the candidates depending on the availability of vacancies in the cadre between "insiders" and "outsiders". Those who claim and are allocated to the Home State are called "insiders" whereas those who are allocated to a different State other than Home State are called "outsiders".

2.4 While the applicant and other selected candidates to IAS were under pre-appointment training, Govt. of India issued a statement indicating distribution of "Insiders and Outsiders" vacancies for various States in IAS cadre on the basis of CSE 1996 on 2.7.97 (vide annexure-A2). According to this, State of Andhra Pradesh was allotted the following "insider" and "outsider" quota against reserved and unreserved candidates.

Total Vacancies = 5 (SC =1, OBC =1 and UR =3)
 Insiders = 2 (OBC =1 & UR =1)
 Outsiders = 3 (SC =1 & UR =2)

2.5 Against the aforesaid vacancy position, the following persons were allocated to the Andhra Pradesh cadre :-

	<u>Name</u>	<u>Status</u>	<u>Rank</u>	<u>Remarks</u>
1.	Peeyush Kumar	U.R.	9	Outsider
2.	N.Sridhar	U.R.*	29	Insider
3.	Shailaja Ramaiyer	U.R.	31	Insider
4.	Ahamad Nadeem	OBC	47	Outsider
5.	Bhupinder Kaur Aulkah	SC	107	Outsider

3. The grievance of the applicant precisely is that Shri N.Sridhar though an OBC candidate was recommended as an UR candidate in view of his higher rank. Accordingly, he was to be allocated to his Home State as an "insider" against UR vacancy. As a result, the "insider" vacancy earmarked for OBC ought to have been given to the applicant as he was next in rank as an "OBC" candidate. But the respondent authorities allocated the next candidate to Shri N.Sridhar i.e. Shri Shailaja Ramaiyer (above the applicant) against "insider" vacancy earmarked for UR candidate while treating Sri N.Sridhar, though recommended against UR vacancy, as an OBC "insider" candidate

S. O. R.

thereby depriving the applicant of his legitimate right to be appointed against earmarked "insider" vacancy for OBC. Instead, he was allocated to Assam-Meghalaya cadre as an "outsider", where there was no "Outsider" OBC vacancy in 1996-97 bloc year.

4. The prayer of the applicant is for a direction to the respondents to allot him to his home State cadre i.e. Andhra Pradesh cadre and to quash the speaking order dt. 10.9.01 (annexure-A7).

5. The official respondents have contested the application by filing a written statement supporting the action taken by them in treating Sri N.Sridhar as an "insider" OBC candidate and allocating the next candidate i.e. Shailaja Ramaiyer the only 'insider' UR vacancy. It is contended that the applicant being next in rank could not be accommodated in the Home State as OBC candidate as there was no other "insider" vacancy available and hence he was offered Assam-Meghalaya cadre which he accepted without any protest. Hence, he is now estopped from raising any objection for his non-allotment to Home State cadre as OBC candidate.

6. We have heard the ld. counsel for the applicant and also for the official respondents. None has appeared for the private respondents nor any written reply has been filed on their behalf.

7. The only issue before us is whether the applicant was entitled to be allotted to his Home State cadre as an "insider" OBC candidate according to his rank, preference and available OBC vacancy.

8. It is not in dispute that Shri N. Sridhar was an OBC candidate and he ranked at Sl. No. 29. It is also undisputed that the next successful OBC candidate was the applicant whose rank was 34.

In between, an UR candidate i.e. Shailaja Ramaiyer at rank 31 appears.

9. The official respondents have not denied the fact that Shri N.Sridhar was recommended for appointment as an UR candidate by virtue of his rank even though he belongs to OBC category. However, while allocating the cadre, they made a volta face by treating Shri N.Sridhar as an OBC candidate and allotted him the "insider" slot. As

S. S.

a result, the "insider" UR slot was given to the next candidate i.e. Shailaja Ramaiyer. Consequently, the applicant was denied allotment in Home State cadre as OBC candidate for want of any further "insider" vacancy as there were only two "insider" vacancies during the relevant recruitment year viz. one for UR and one for OBC and hence the applicant was allotted to Assam-Meghalaya cadre.

10. Both parties have relied on the decision of the Hon'ble Supreme Court in the case of UOI & Ors -vs- Rajiv Yadav & Ors reported in (1994) 6 SCC 38 wherein the policy decision issued by the Govt. of India dated 30/31 May, 1985 regarding allocation of cadre to All India Services and also the "roster system" for "insider" and "outsider" slots for both reserved and unreserved categories of candidates has been upheld.

11. In support of the action of the official respondents in treating Shri N.Sridhar as an OBC "insider" candidate though recommended for appointment as UR candidate by dint of his merit and rank, they have placed reliance on the principle allegedly being followed since 1994 which is incorporated in paras 10 & 11 of the impugned speaking order. It will be useful to quote the full text of the same as under :-

"10. Whereas it may so happen that in the home State of an OBC candidate recommended against unreserved vacancy, both insider unreserved as well as insider reserved vacancies are available, at his turn. In that case, his allocation will be made against unreserved or reserved vacancies depending on the category of the next below candidate hailing from the same State. If the next below candidate from the same State is from unreserved category, then the first candidate will be allocated against reserved vacancy. If the next below candidate from the State is from reserved category, then the first candidate would be allocated against unreserved vacancy.

11. And Whereas, this policy has been followed since Civil Services Examination 1994 without any deviation or exception. This policy is followed so that a higher ranking candidate is not denied his home State who has a preferential claim over lower ranking candidate."

12. It will also be relevant to quota in full para 13 of the speaking order as under :-

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"13. And Whereas on the basis of Civil Services Examination, 1996, there were two insider vacancies - one for unreserved candidate and one for OBC candidate in IAS cadre of Andhra Pradesh. The first candidate hailing from Andhra Pradesh was Shri N.Sridhar (Rank-29). He belongs to OBC category but was recommended against unreserved vacancy. The next two candidates hailing from Andhra Pradesh were Shri Shailaja Ramaiyer (Rank-31 -unreserved category) and Shri J.Shyamala Rao (Rank-34-OBC). As the next candidate to Shri N.Sridhar (Rank 29), namely Shri Shailaja Ramaiyer (Rank-31) belongs to unreserved category, Shri N.Sridhar was allocated to his home State i.e. Andhra Pradesh against reserved vacancy and Shri Shailaja Ramaiyer against unreserved category."

13. In this context, it will also be pertinent to quote sub-para (vii) of para 4 of the policy decision of Govt. of India dated 30-31 May, 1985 (annexure-R2) as upheld by the Hon'ble Apex Court in Rajiv Yadav's case (supra) decided on 21.7.1994. It runs like this :-

"(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....."

14. From a perusal of the two policy decisions i.e. one of May 1985 as upheld by the Hon'ble Apex Court in Rajib Yadav's case and the other allegedly being followed from 1994 onwards as mentioned in paras 10 and 11 of the impugned speaking order seem to be at variance and contradictory. The policy decision of 1994 has not been produced before us. According to the 1985 policy decision, a reserved category candidate, whose merit position is such that he could be appointed to the service even on merit alone treating as if there was no reservation, in that event, in the matter of allotment, he should be treated as a general candidate. Based on this principle which is upheld by the Hon'ble Apex Court, Shri N.Sridhar, who was at the top of the merit list amongst the candidates hailing from Andhra Pradesh and opted for Home State cadre, ought to have been appointed as a general category or UR candidate even though he belongs to OBC category. In fact, this was also the recommendation of the UPSC as

S. A.

admitted by the official respondents. In that event, the next person i.e. Shri Shailaja Ramaiyer (rank-31) who belongs to UR category, could not have been allotted to home State as there was only one slot for "insider" UR candidate at the relevant recruitment year. In that case, the applicant, who was the next person and belongs to OBC category, should have been allotted his home State as "insider" in the earmarked slot. But admittedly this was not done on the basis of undisclosed policy decision allegedly being followed from 1994 onwards. According to this policy decision, as explained in para 16 of the impugned speaking order, allocation of reserved or unreserved vacancy is dependent on the category of next below candidate hailing from the same State. In our opinion, this policy decision has its inherent defect because it is against the earlier policy enumerated above nor it is a written policy. In support of this policy decision of 1994, it is contended in para 11 of the speaking order that this policy is followed so that a higher ranking candidate is not denied his home State who has a preferential claim over lower ranking candidate. But at the same time, it is stated in para 21 of the speaking order by quoting from the observation of the Hon'ble Apex Court in Rajib Yadav's case as under :-

" And Whereas, it is well settled law that 'a selected candidate has a right to be considered for appointment to IAS but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service. A member of an All India Service bears liability to serve in any part of India'. Therefore allotment to home cadre cannot be claimed as a matter of right."

In our view, this rule does apply in the present context inasmuch as the higher ranking candidate is an U/R insider, and the available vacancy belongs to OBC insider slot. The comparison is grossly improper.

15. In our opinion, the above observation of the Hon'ble Supreme Court does not permit the respondent authorities to flout their self-professed rules, or legalise an illegal act of deviation. In the present context, the high ranking candidate is an U/R candidate out

[Signature]

Higher rank has been vaunted in the context of allocation of an OBC insider quota post which should go to an insider OBC candidate by their own policy pronouncement. Higher rank held by an UR candidate is not a good ground, therefore, to deprive the insider OBC quota to an available insider OBC candidate. The Hon'ble Supreme Court did not in the above observation give any such indulgence to the respondents to flout their own policy to accommodate a higher ranking U/R against an OBC insider quota post. The comparison is, devious and improper.

15.1 Further, in our opinion, this observation equally holds good in the case of Shri Shailaja Ramaiyer. She cannot also claim allocation in Home State cadre merely because she, an UR, is two positions higher to the OBC applicant. The official respondents cannot on this ground make allocation overlooking insider quota and its category. If a post is earmarked for OBC insider, it ought to go to an eligible OBC insider. His position may be lower to an U/R but the rule does not permit any one to side-track this. That is in the very core of quota rule professed by the respondents. In a situation where there is no "insider" slot in a particular year for a particular category of candidate, he/she cannot be retained in the home State even though his/her rank is much higher than those category of candidates for whom "insider" slots may be available. Thus, ranking is not the sole criteria for allocation in the home State, but the earmarked 'insider' slots which are based on the 1985 policy decision as upheld by the Apex Court^{is}. The roster, if applied as per rule, could not have offered an OBC insider post to an U/R candidate.

16. Moreover, the policy decision of 1985 and also the undisclosed and unpublished policy decision of 1994 as well as the decision of the Apex Court in Rajib Yadav's case were all pre-1995 i.e. before the decision of the Constitution Bench in R.K. Shabarwal's case, AIR 1995 SC 1371. It has been held therein and in subsequent decisions also that reserved category candidates can compete against unreserved vacancy on merit and on their selection on merit they should not be treated as reserved category candidate. This is also precisely the

S.R.

policy of the Govt. of India incorporated in 1985 policy circular as quoted above.

16. Thus, it appears that during the relevant year, the respondent authorities allotted in fact two UR candidates viz. S/Sri N. Sridhar and Sailaja Ramaiyer as "insider" candidate though there was only one slot reserved for UR candidate. Amongst them Shri N. Sridhar was higher in rank and he was admittedly recommended for UR vacancy. Due to the alleged 1994 policy decision, the respondents allotted the higher ranking candidate "OBC" slot thereby showing favour to the next below U/R person to keep him in the home State ignoring their own sermon that no selected candidate has a right to be allocated to a cadre of his choice or to his home State.

17. There is another aspect of the matter. Admittedly, the applicant was allotted the Assam-Meghalaya cadre in 1997. But from the cadre allocation of IAS candidates of 1997 batch (copy produced before us), it appears that there was no "outsider" slot for OBC for Assam-Meghalaya cadre, yet the applicant, who belongs to OBC category and does not hail from the State of Assam, was allocated in that cadre. This is another infirmity in the action of the respondent authorities.

18. We found multiple deviations from the stated rules and procedure of cadre allocation in the chart of Cadre Allocation of I.A.S. Candidates of 1997, in respect of Andhra Pradesh which was produced before us during hearing of the case by the respondent's counsel.

18.1 In all 5 IAS Officers were to be allocated for A.P. in 1997 slot with the following category-wise break-up :-

U.R.	- 3
OBC	- 1
SC/ST	- 1
=====	
Total	= 5

18.2 These posts were ordained to be filled in the said chart in order of the following Insider and Outsider quota allotted to respective UR, OBC and SC/ST Groups of IAS :-

5 12

	U.R.	OBC	SC/ST	TOTAL	REMARKS
Insider Quota	1	1	-	2	
Filled	2	-	-	2	One UR Extra One OBC less
	+ 1	-1			
=====					
Outsider Quota	2	-	1	3	
Filled	1	1	1	3	One UR Outsider less One OBC Outsider extra
	-1	+1			

18.3 In all three noteable deviations in filling the insider and outsider quota have taken place in their own showing in the Cadre Allocation Chart in respect of A.P. Cadre IAS, which can be enumerated as below :

18.4 Though all the five posts have been somehow filled with 3 U/R. 1 OBC AND 1 SC, but a good deal of grooving was done - which is not according to the professed rule or procedure. The insider and outsider quota had been palpably violated in their own showing by the respondent in A.P.

	U.R.	OBC	SC
Sl. No. in IAS	7, 27 & 287	41	51
Rank in CSE, 1996	9, 29, & 31	47	107
(Peeyush Kumar, N.Sreedhar & Shailaja Ramaiyer) Ahmad Nadeem Bhupinder Kaur Aulakh			

18.5 It is clearly seen from the above, that i). as against 2 outsiders U/R to be filled for A.P. only one U/R was taken from outside. The deficiency was made good by favouring Shailaja Ramaiyer (S.No. and Rank 27, 29 respectively) who is an insider candidate below N. Sridhar OBC converted to U/R by merit as discussed (ibid). (ii) As against one allotted insider OBC, no insider OBC was taken - as we have reason to believe that N. Sridhar a high ranking OBC forfeited his OBC appointment by merit and was categorised and treated

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as U/R by the respondent in their own showing in the Cadre Allocation Chart cited above. He was actually granted an U/R slot in the chart to fill up 3 U/R posts for A.P. That is to say, the respondents, for all practical purposes, accepted him as an UR candidate. In the net result the OBC Insider quota post which went by default to be filled from the next Insider available candidate i.e. the applicant, was surprisingly, without any rule, precedence or authority, made good way to a much low ranking outsider OBC Ahmad Nadeem. The obvious choice for the next below insider OBC to the applicant was blandly evaded for reasons not clarified. The ones stated are not legal as by their own showing N. Sridhar (Res.4) has been allotted an insider U/R quota post.

18.6 It may prima facie appear that the applicant had accepted the allotment but what of that, when palpable irregularity was committed in the allotment itself. He has challenged what is prima facie illegal and unauthorised compounding his quota of sufferance. What we could unmistakably notice is that there were two outsider U/R quota posts to be filled but only one outsider was allowed to join, not two. If that was done, as it is legally the provision then there could be no question of the outsider U/R quota post being given to an insider candidate (Res.5). This ultra vires have seemingly been covered up by quoting the applicant as a lower ranked OBC than Shailaja Ramaiyer, who is an U/R Insider in any case. Therefore, in our considered view, the comparison is both illegal and unsavoury. There is no rule written or otherwise which permits such comparison for justifying this unusual consideration in favour of Res.5. The respondents have actually given the allocation to N. Sridhar under U/R category in the Cadre Allocation Chart and has actually shown the intake of 3 U/R including N. Sridhar (R-4). Thereafter such an argument of the respondent in para 18 of the impugned letter dated 10-9-03 could only be rated as unfortunate excuse even in any common parlance. The legal point missed in the impugned order is that had there been no OBC insider quota to talk about, Res.4 whose categorisation as U/R on

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merit being irreversible incidence of service, would have got the single insider quota, not Res.5. The Rule or its exception both should be legally interpreted and applied which we find is missing. We have already discussed that the categorisation of an OBC as U/R on merit consideration is irrevocable - meaning thereby that the Res.4 is liable to enjoy and suffer both the advantages and disadvantages of an U/R candidate. But the respondents have interpreted it as a two way traffic. We are not able to agree with this as no rule permits the OBC to enjoy the facility of both worlds.

18.7 Thus, it is quite clear that against two UR vacancies earmarked for "outsider" only one was allotted i.e. Sl. No. 1 (Shri Peeyush Kumar). There was no quota for OBC for "outsider", yet Shri Ahmad Nadeem (Sl.No. 4), an OBC "outsider" candidate was appointed. Obviously, there was a shortfall of UR "outsider" quota and in its place an OBC "outsider" candidate has been appointed.

18.8 From the foregoing array of facts it is clear that the UR vacancy for "insider" quota, which ought to have gone to Shri N. Sreedhar was actually given to him in the chart because of his higher rank. Thereafter, no insider U/R post was available to accommodate Shri Shailaja Ramaiyer as an UR-Insider. Shri N.Sreedhar could not have been treated again by any double standard as an "insider" OBC candidate. The OBC post could not be given to an OBC "outsider" candidate as it has been done - all in furious disregard of their own rules and procedure. In the process, the applicant was also deprived of getting accommodation in home State cadre against a clear "OBC" insider quota, to which he was otherwise eligible. In our considered opinion, internal adjustment of quota for "outsider" and "insider" for reserved and unreserved candidates against declared vacancies to accommodate a favoured candidate cannot be done which will frustrate the very purpose of fixation of quota system itself as per the policy decision of the Govt. of India, on which the respondents themselves place reliance.

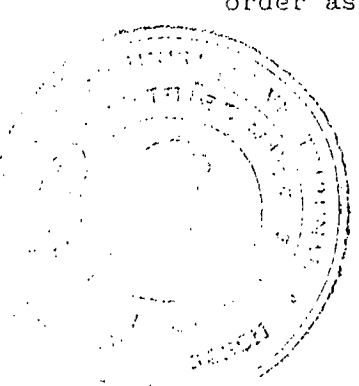
19. For the reasons stated above, we are of the opinion that

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non-allotment of the applicant to his Home State Cadre against the slot reserved for "insider" OBC candidate is not according to the policy guidelines enunciated by the respondents themselves. However, after all these years, it is also not possible to revise the allotment order made long ago, especially when neither Shri N.Sridhar nor Shri Shailaja Ramaiyer (respondents 4 and 5) were responsible for such allotment which was done by the respondent No. 1.

20. Keeping in view the peculiar facts and circumstances of the case, we are of the considered opinion that ends of justice will be met if we direct the respondent authorities, especially respondents 1 to 3 to allot the applicant his home State cadre i.e. Andhra Pradesh cadre against any available vacancy or against the first available future vacancy. Consequently, the speaking order dt. 10.9.01 (annexure-A7) is liable to be quashed.

21. We order accordingly and allow the application without any order as to costs.



S. Biswas
(S. BISWAS)

MEMBER(J)

CHOWDHURY. J. (V.C.)

I have had the advantage of reading the draft judgment rendered by the esteemed member. By agreeing with the conclusion at which he has reached, I gratefully adopt his detailed account of the circumstances giving rise to the present O.A. I hereinbelow add my observations thereanent -

The Indian Administrative Service (Cadre) Rules, 1954 regulates the allocation of cadre officers to various cadres. Rule 5 of the Rules provides that the allocation of the members of IAS to various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned. The Central Government is authorised to transfer a cadre officer from one cadre to another cadre with concurrence of the State Government in accordance of Sub-rule (2). Referring to the rules, Mr R. Sharma, learned counsel for the respondents, contended that when a person is appointed to the Service (IAS) having various State Cadres, he does not have any further right to claim allocation to a State of his choice or to a home State. The sole discretion to allocate the members of the Service to various cadres is entrusted to the Central Government by a statute. Mr R. Sharma contended that in light of the professed policy adopted by the Government of India in the matter of cadre allocation of IAS officers, stipulates that preference in the matter of cadre allocation was given to the candidate having merit higher than the other candidates. Shailaja Ramaiyer who was higher in rank to the applicant was allocated to the sole insider vacancy earmarked for unreserved category of candidates.

2. Admittedly, the policy of allocation on the basis of the roster system was indicated in the D.O. letter dated 30/31.5.1985. On the basis of the roster system, sub-para 2 of para 3 of the aforementioned communication provides for distribution of reserved vacancies in each cadre between 'outsiders' and 'insiders' in the ratio of 2 : 1. As per clause (vii) of para 4, "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....."

3. On the own showing of the respondents, the position of respondent No.4, N. Sridhar, in the merit list was such that he could have been appointed to the Service in the absence of any reservation and as a matter of fact he was treated as a general candidate. His appointment was made as unreserved category by virtue of his merit position. For purpose of allotment also he was to be treated as a general candidate and not otherwise.

4. Discretion conferred is not unfettered, nor the same is arbitrary. The purported reasons assigned by the authority in refusing to allocate the applicant, the 'insider' reserved vacancy is obviously ultra vires for taking into account factors which were legally irrelevant. The methodology adopted for treating N. Sridhar, the respondent No.4, against the 'insider' reserved vacancy runs counter to the professed policy.

Rules.....

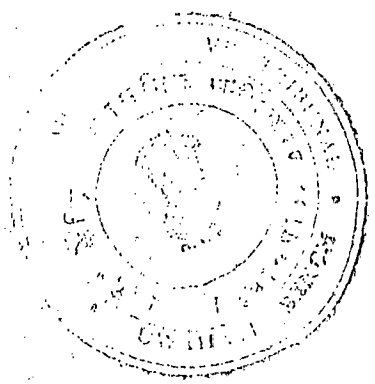
Rules bind, professed policy guides in the exercise of discretion. The roster system itself is introduced to provide equitable treatment to both the general candidates and the reserved candidates. The professed policy referred to by Mr R. Sharma, learned counsel for the respondents, envisages the roster system. It was introduced also to ensure equitable distribution of reserved candidates. As was aptly described in the following passage of the Supreme Court in Union of India and others Vs. Rajiv Yadav, IAS and others, reported in (1994) 6 SCC 38:

"We may examine the question from another angle. A selected candidate has a right to be considered for appointment to the IAS but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service. A member of an all-India Service bears liability to serve in any part of India. The principles of allocation as contained in clause (2) of the letter dated 31.5.1985, wherein preference is given to a Scheduled Caste/Scheduled Tribe candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the anvil of Article 16(4) of the Constitution of India does not arise. 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 amongst 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."

5. On the own showing of the Respondents the professed policy was adopted for cadre allocation. Legal policy enjoins upon the authority to meticulously and punctiliously adhere to the norms it proclaims. In this context it would be apt to rehearse the following observation of the Supreme Court in R.D. Shetty vs. International Airport Authority, reported in (1979) 3 SCC 489.

"It is well settled rule of administrative law that the executive must be rigorously held to the standards by which it professes its action to be judged and it must scrupulously observed those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr Justice Frankfurter in Viteralli Vs. Saton where the learned Judge said:

An executive agency must be rigorously held to the standards by which it professes its action to be judged Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

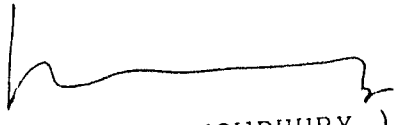


6. On the own showing, the respondent No.4, N. Sridhar, was appointed to the Service and treated on par with the General candidates. This aspect of the matter was conclusively dealt by this Bench in O.A.No.1 of 1999 between the same parties. The findings to that extent is final and binding.

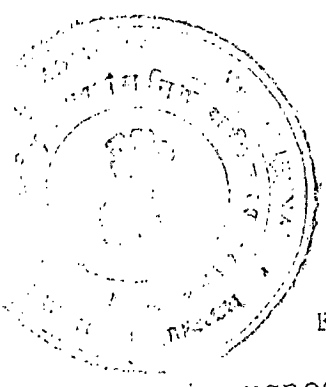
7. The considerations those operated in the mind of the authority in excluding the applicant the 'insider' OBC vacancy and preferring the respondent No.5 against the said vacancy was guided by extraneous and irrelevant consideration, which amounted to denial of equality and thus isolation of Articles 14 and 16 of the Constitution.....

: 5 : 24 -

Constitution. Needless to recount that Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. An underlying basis of the professed policy of Cadre allocation is to render justice and to avoid injustice. The basic aim of the Indian Constitutionality is that the law should afford equal treatment for all. It is aimed at, to borrow the expression of Professor N. Dworkin, 'Equal Concern and Respect' - (Taking Rights Seriously - by R. Dworkin).


(D. N. CHOWDHURY)
VICE-CHAIRMAN

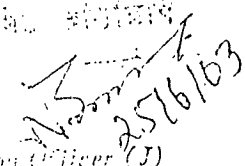
ORDER



For all the reasons stated above, we set aside the impugned order No.22012/15/99-AIS(1) dated 10.9.2001. The application is allowed. The respondents are directed to revise the allotment order to the OBC 'insider' vacancy for 1996-97 in respect of Andhra Pradesh Cadre and to consider the case of the applicant for allotment in his home State as a OBC quota holder in the light of the observations made above within three months from the date of receipt of the order.

No order as to costs.

Sd/VICE CHAIRMAN
Sd/ MEMBER (A1111)

Certified to be true copy
of the original

Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-781005

nkm

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ADVANCE COPY

ANNEXURE-B

30
Guwahati,
25/06/2003

From

J.Syamala Rao
(IAS:RR 97, Assam-Meghalaya cadre)
Chief Executive Officer,
Guwahati Metropolitan Development Authority,
Bhangagarh, STATEFED building, Guwahati

To

The Secretary to the Government of India,
Department of Personnel and Training,
Ministry of Personnel, Public Grievances and Pension,
North Block, New Delhi

Through the Chief Secretary to the Government of Assam, Dispur

Sub: Request for allotment of Andhra Pradesh cadre as per the direction
of the Central Administrative Tribunal, Guwahati

Personnel
Sir,

With reference to the above I bring to your notice the following facts for
your kind consideration and favorable action.

I belong to 1997 Batch of IAS, and have been allotted to the Assam-Meghalaya cadre. However as my cadre allotment is not as per rules and guidelines in force, I have filed a representation before the Department of Personnel and Training (DOPT), Ministry of Personnel, Public Grievances & Pension on 17/03/1998 for allotting me my home cadre of Andhra Pradesh. However my representation was rejected on 22nd September, 1998, through letter number 13011/17/98-AIS(I).

Aggrieved by the above decision of the DOPT, I have filed a petition (OA no 1 of 1999) before the Hon'ble Central Administrative Tribunal, requesting for a direction to the DOPT for change of my cadre to Andhra Pradesh. The Hon'ble Tribunal was pleased to set aside the order of the DOPT bearing letter number 13011/17/98-AIS(I) dated 22nd September, 1998 which rejected my representation, made some observations and directed them to reconsider my cadre allocation in accordance with the observations made by the Tribunal.

Confirmed to be true Copy
INDRANEEL CHOWDHURY
Advocate

The DOPT instead of reconsidering my cadre allotment as per the observations of the Tribunal, once again passed a speaking order dated 22012/15/99-AIS(I), dated 10th September, 2001, rejecting my claim for cadre allotment to Andhra Pradesh, on the same grounds which were examined and rejected by the Tribunal.

Once again I have filed a petition before the Hon'ble Tribunal through OA no 91 of 2002, requesting them to direct the DOPT to set aside order no 22012/15/99-AIS(1) dated 10/9/2001 and also direct DOPT to allot me my home cadre. The Hon'ble Tribunal was pleased allow my application and passed an order holding the process of allotment of Insider- OBC vacancy illegal and also set aside the speaking order no 22012/15/99-AIS(1) dated 10/9/2001 of the DOPT. **The Hon'ble Tribunal further directed the DOPT to allot me my Home cadre of Andhra Pradesh.**

Copy of the Order passed by the Hon'ble Tribunal in OA no 91 of 2002 is enclosed here with.

In view of the reasons cited above I request you to allot me my home cadre within the time stipulated by the Hon'ble Central Administrative Tribunal, Guwahati.

Encl: As above.

Yours faithfully,


(J. Syamala Rao)

Copy for kind information and request for implementing the order of the Tribunal in OA no 91 of 2002 (order copy enclosed) to the Chief Secretary to the Govt of Andhra Pradesh, Hyderabad.

Yours faithfully,


(J. Syamala Rao)

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<<GUMAMATI 6PQ 4781001>
Inl-SP EEB47678777IN
PA : SDR
To: SECY GOVT DEPT. PE, KARNATAKA
DELHI, PIN: 110001
From: J. BHARAL, RAO, CHY
Wt: 150grams Frs: 0.00
Avt: 30.00, 26/06/2003, 10:53:41
HAPPY NEW YEAR 2003

Certified to be true Copy

Shy

DANIEL CHOWDHURY
Advocate,