

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 52 of 2002

Jabalpur, this the 15<sup>th</sup> day of September, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. A.K. Bhatnagar, Judicial Member

Alankar Malviya, S/o Shri Shyam  
Kumar Malviya, aged about 32  
years, Resident of H-17, Old  
Subhash Nagar, Bhopal(MP)-462023,  
presently working as District  
Women and Child Development  
Officer Posted at Bhopal

APPLICANT

(By Advocate - Shri Sanjayram Tamrakar)

VERSUS

1. Union of India through the Secretary,  
Ministry of Personal. P.G.& Pension.  
Department of Personal and Training.  
New Delhi.
2. Union Public Service Commission  
through the Secretary, Dholpur  
House-New Delhi.

RESPONDENTS

(By Advocate - Shri P.Shankaran)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the  
following main reliefs :-

"(ii) to quash impugned order dated 25/29-1-2001 in  
the interest of justice and further be pleased to allot  
posting/service to the applicant in accordance with his  
merit & rank.

(iii) to direct the respondents to allot posting/service  
to the applicant which has been allotted to a person  
ranking just below i.e. 330 which is Assistant Commandant,  
CISF, in the interest of justice".

2. The admitted facts of the case are that the applicant  
appeared in the Civil Services Examination, 1999. He qualified  
the preliminary examination and then appeared in the main  
examination, and finally appeared in the interview which was  
held in May, 2000. On the basis of over-all performance of  
the applicant in the Civil Services Examination (for short 'CSE'  
he secured rank 329 in the over-all merit, and 87 in the

specific merit belonging to Other Backward Class (for short 'OBC') category. The applicant belongs to OBC category. The applicant submits that he has given the following order of preferences, in accordance with Rule 2 of the CSE-

- "(i) Indian Administrative Services (IAS)
- (ii) Indian Police Service (IPS)
- (iii) Indian Foreign Services (IFS)
- (iv) Indian Revenue Services (IRS)
- (v) Indian Customs & Central Excise Services(IC&CS)"


Rule 2 ibid speaks as under -

"2. A candidate shall be required to indicate in his/her application form for the Main Examination his/her order of preferences for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by Union Public Service Commission.

A candidate who wishes to be considered for IAS/IPS shall be required to indicate in his/her application if he/she would like to be considered for allotment to the State to which he/she belongs in case he/she is appointed to the IAS/IPS.

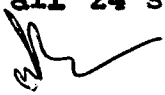
NOTE:-The candidate is advised to be very careful while indicating preferences for various services/posts. In this connection, attention is also invited to Rule-19 of the Rules. The candidate is also advised to indicate all the services/posts in the order of preference in his/her application form. In case he/she does not give any preference for any services/posts, it will be assumed that he/she has no specific preference for those services. If he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a services/posts in accordance with their preferences". (emphasis supplied by us)

2.1 The contention of the applicant is that there were only 97 posts available <sup>for</sup> the OBC candidates. In addition 6 OBC candidates have secured their place in the general category on their own merits. In view of this only 97+6 i.e. 103 candidates should have been recommended for appointment. But, instead of recommending 103 candidates belonging to OBC category, the UPSC has recommended 127 candidates to the respondent no.2 (sic -respondent no.1) which suffers from total non-application of mind. The main grievance of the applicant is that he was at serial no.329 in the over-all merit of the selected candidates, however, he has not been allocated to any service and thus denied the appointment, whereas the candidate who was placed at serial no.385 has



been offered posting/service, which amounts to a total ignorance of the merit. The applicant has contended that the merit of a candidate cannot be ignored and he cannot be deprived of his right ~~to~~ accrued to him on account of merit. The respondents vide impugned order dated 25/29.1.2001(Annexure-A-3) have rejected the claim of the applicant. Hence this OA.

3. The respondents in their reply have stated that keeping in view the provisions of Rule 16 of the Examination Rules, the respondent no.1 recommended 97 OBC candidates with relaxed standards as 97 vacancies were earmarked for OBCs. Additionally, all 30 OBC candidates who qualified without resorting to any relaxations/concessions in the eligibility or selection criteria at any stage of the examination were recommended as general merit candidates. With regard to contention that recommendations of extra 24 OBC candidates deprived applicant allocation to a service and while OBC candidate with rank 385 has been offered service/posting, applicant with rank 329 has not been offered service/posting, the respondents have stated that the applicant could not secure a service not due to recommendation of extra 24 OBC candidates but on account of his failure to comply with the provisions of Rule 2 of the CSE Rules, 1999 as reproduced above. The applicant was advised vide Note below Rule 2 *ibid* to be careful while indicating preference for various services/posts. He was advised to indicate all the services/psts in the order of preference. It was also stated that, in case, he does not give preference for any services/posts, it will be assumed that he has no specific preference for those services. If he is not allotted to any one of the services/posts for which he has indicated preferences, he shall be allotted to any of the remaining services/posts in accordance with his preference. Therefore, it was incumbent upon the applicant to give preference for all 24 services/posts included in the scheme of CSE, 1999 if



he desired to be considered for all the services/posts. The applicant did not comply with the provisions of Rule 2 and indicated preference for only 5 services and left out remaining 19 services. According to the provision of aforesaid Rule 2, applicant was to be considered for allocation to a service - first according to his preference and thereafter to a residuary service in which there are vacancies after allocation of all the candidates who could be allocated to a service in accordance with their preference. After failing to comply with the rules, the applicant cannot complain when the rules are applied in his case. The respondents have also stated that constitutional validity of Rule 2 of the CSE Rules has been upheld by the Hon'ble Supreme Court in the case of Union of India Vs. MVVS Murthy, 1988 SCC(L&S) 213. Therefore, the applicant cannot claim parity with those OBC candidates who complied with the rule and were allotted to services according to their preference. The applicant has been duly considered for allocation to a service of his preference but could not secure a service due to his very low merit position vis-a-vis OBC candidates. This position is clear from the following table-

"Civil Services Examination 1999

Services/Posts in the order indicated by applicant(Rank-329)	Rank of last OBC candidate allocated the service/post
1.Indian Administrative Service(IAS)	131
2.Indian Police Service (IPS)	232
3.Indian Foreign Service (IFS)	181
4.Indian Revenue Service(IRS)	252
5.Indian Customs & Central Excise Service (IC&CES)	264

The respondents have also stated that a similar issue has been considered and decided by the Principal Bench of the Tribunal in the case of Anil Kumar Vs. Union of India and another, O.A.No.2624/1996 and the same has been rejected on similar grounds. In view of the aforesaid, the respondents have urged that this OA is liable to be dismissed.


4. Heard the learned counsel of both sides and we have given careful consideration to the rival contentions.

5. It is not in dispute that the applicant had qualified and selected in the CSE, 1999 securing the rank 329. In the said examination, 97 vacancies were earmarked for OBCs, and 30 candidates belonging to OBC, who have been selected without resorting to any relaxed standards in the eligibility or selection criteria, were recommended as general merit candidates. Therefore, in all 127 candidates belonging to OBC were allocated/appointed to the civil services. As per Rule 2 of the CSE Rules, a candidate is required to indicate in his/her application form for the Main examination his/her order of preferences for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by the UPSC. The Note below Rule 2 clearly stipulates that the candidate is advised to be very careful while indicating preferences for various services/posts. As per the said Note, the candidate is also advised to indicate all the services/posts in the order of preference in his/her application form. "In case he/she does not give any preference for any services/posts, it will be assumed that he/she has no specific preference for those services. If he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/posts in accordance with their preferences". In this case, we find that the applicant has indicated preferences only for five services i.e. IAS, IPS, IFS, IRS & IC&CES, leaving aside 19 other services. Therefore, he has been considered only for these services/posts. It is clear from the table reproduced in para 3

above, that the last OBC candidate allotted to such

services/posts ranked 264 whereas the applicant had ranked 329. As per Note below Rule 2 *ibid* the applicant could be considered for remaining 19 services for which the applicant has not given any preference, only after allocation of all the OBC candidates who could be allocated according to their preference. In this manner, no vacancy in any service/post was left out and, therefore, the applicant finally could not secure any service. This is, however, not due to any lapse on the part of the respondents but because of failure of the applicant to comply with the provisions of Rule 2 *ibid*. The constitutional validity of Rule 2 *ibid* has already been upheld by the Hon'ble Supreme Court in the case of MVVS Murthy (*supra*).

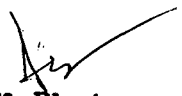
6. The contention of the applicant is that only 103 candidates belonging to OBCs ought to have been recommended, as only 6 OBC candidates could qualify the selection in the general merit. We find that this could have been possible/workable only when the conduct of the examination including recommending the name of successful candidates as well as allocation of service were dealt with simultaneously by the respondents. Since recommendations and allocation process are dealt with separately, it is not known at the stage of making recommendation whether a reserved candidate, namely, OBC candidate, who qualifies without resorting to any relaxation/concessions in the eligibility or selection criteria at any stage of the examination, would secure his place in general category read with preference i.e. whether he would consume an unreserved (general) vacancy or an OBC vacancy with reference to his preference. This aspect can be taken into account only at the time of making allocation by respondents. Therefore, we find <sup>some</sup> force in the contention of the respondents that "as allocation of service is beyond the ambit of respondents no.1, recommendation is made by it on the basis of results of the examination i.e. reserved candidates who qualify without resorting to any relaxations/

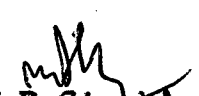


concessions in the eligibility or selection criteria at any stage of the examination are recommended as general merit candidates and additional reserved category candidates equivalent to such candidates are recommended as reserved candidates."

7. We also find that the applicant's case is also not comparable with the candidates placed at rank 330 and rank 385 and several other candidates between them who could secure the service because these candidates were allocated to the services for which they had indicated their preferences, while in the case of the applicant he had not indicated any preference for these services. We also find that <sup>a</sup>the candidate with rank 330 was inducted into CISF as he had included CISF in his preference and <sup>a</sup>candidate with rank 385 was <sup>Head</sup> allocated to Armed Forces/ as he had included Armed <sup>Headquarters</sup> Forces in his preference, while the applicant did not include the CISF and ARMED Forces Headquarters and several other services in his order of preference. In view of these facts, the applicant after failing to include the services in his preference and also failing to comply with the provisions of Rule 2 ibid, cannot complain that he has been discriminated.

8. In the result, for the reasons recorded above, we do not find any merit in this OA and the same is accordingly dismissed, however, without any order as to costs.

  
(A.K. Bhatnagar)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman