

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 4366/2014

Reserved on: 09.11.2016
Pronounced on: 14.12.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Parshant Dhanda
S/o Sh. Mohinder Singh Dhanda,
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Jind – 126 102 (Haryana)

At present posted as

Deputy Conservator of Forests,
Office of The Conservator of Forests,
Southern Assam Circle,
Silchar- 788001 (Assam).

...Applicant

(By Advocate: Sh. Shree Prakash Sinha)

Versus

Union of India through
Secretary,
Ministry of Environment & Forests,
Indira Paryavaran Bhawan,
Jor Bagh, Aliganj, Jorbadh Road,
Prithvi Wing, 6th Floor,
New Delhi – 110 003.

...Respondent

(By Advocate: Sh. Rajinder Nischal)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A)

Rejection of representation dated 23-08-2011 by the respondents, in pursuance of the order dated 11.03.2014 in OA No.3562/2013 directing the respondents to consider and dispose of the afore said representation has

been under challenge in this OA filed by the applicant under Sec. 19 of the Administrative Tribunal's Act, 1985 in which, the applicant seeks the following relief(s):-

A. Quash the impugned order dated 19.06.2014 (Annexure-A) passed by the respondent;

B. Consequently direct the respondent to allocate the applicant State Cadre of Uttar Pradesh in true compliance of the policy as mentioned in Annexure-B; and/or

C. Pass such other or further order/orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

2. Succinctly stated, the version of the applicant is that having been selected for the Indian Forest Service (IFS) on the basis of IFS Examination, 2007 under general category the applicant was, vide letter dated 18.11.2008, allocated the Assam-Meghalaya cadre by the respondent. He had secured 06th rank at the All India level in the said examination. It is the case of the applicant that a total of 40 vacancies arose in the IFS cadre to be filled up by way of selection through the said competitive examination, of which 20 would be for general category, 11 for OBC and 9

for composite SC and ST category whereas, the allocation made was 16 for General, 15 for OBC and 9 for SC/ST. The applicant contended that 4 OBC candidates out of 15 selected having come on merit under the General Category ought to have been accommodated in the general category but were erroneously treated as OBC candidates. Further, it is his case that as per para 13 of the guidelines of 1985, separate lists were to be prepared for the OBC and SC/ST, but such a procedure was omitted to be prepared which resulted in distorted allocation of cadre of the applicant.

3. Information obtained by the applicant, through RTI reveals that the respondents allocated 10 candidates to the home state (insider) [rank wise respectively, 1, 4, 8, 12 & 40 and 2, 15, 21, 35 & 39 by way of exchange of vacancies in accordance with para 9 of the Guidelines.] The contention of the applicant is that in so far as allocation of cadre as 'outsider' is concerned, a grave error has been committed by the respondents, as a consequence of which, the applicant, who ought to have been posted at Uttar Pradesh, had been allotted the Assam-Meghalaya Cadre, and he had explained the same addressing a letter dated 23-08-2011 to the Secretary, Ministry of Environment and Forest. In this regard, para 4.15 of the OA reads as under:-

"4.15. That the applicant respectfully submits that bare perusal of the procedure of cadre allotment as

mentioned in Annexure-B vis-a-vis the manner in which cadre has been allotted (Annexure-F) clearly indicates that the allotment of cadre suffers from various fallacies as mentioned in the representation dated 23.08.2011 (Annexure-H). The error has occurred on account of the fact that para 13 of the procedure of allotment as in Annexure-B was not followed. The para No.13 requires the respondent to prepare separate charts for OBC and SC/ST candidates. It may be noted that notwithstanding the issue of exclusion of 04 OBC candidates who were selected in the general merit list; the cadre allotment suffers from apparent error in allotment of outsider vacancies. It may be noted that 10 officers at rank 01, 04, 08, 12 and 40 and further t rank 02, 15, 21, 35 and 39 were allotted their home cadres as per the policy. So far the cadre allotment of outsider vacancy is concerned; it is apparent that the first cycle of the roster started with Tamil Nadu. The candidate at rank 03 namely V.R. Manohar i.e. the first OBC outsider candidate (even though of general category) was allotted to OBC outsider seat in U.P. The next candidate i.e. Shri Rahul Jain at rank 05 was given AGMUT Cadre as he was the first general outsider candidate. The Uttarakhand cadre was allotted to Shri Saket Badola (Rank 15) as general insider. The next in the list was Uttar Pradesh, which has outsider general seat and which could have been allotted to the applicant. The anomaly has been created because of non following of para 13 of the above referred policy as mentioned in Annexure-B. The applicant respectfully submits that the process of cadre allocation is clear in view of the cadre allotment of the IAS officers of 2008 batch as has been mentioned in representation dated 23.08.2011..."

4. As there was no response, he had filed OA No. 3562 of 2013, which was disposed of by order dated 11-03-2014 with a direction to the respondents to consider the pending representation and pass a reasoned order within six weeks. By the impugned order dated 19-06-2014, the respondents had, as per the applicant, disposed of the representation without assigning any reasons and the issues raised in the representation had not been addressed. Hence, he has filed

the present OA No. 4366 of 2014, *inter alia*, on the following grounds:-

- (a) The impugned order being non-speaking and without expressing any reason for arriving at the decision to reject his request, the same is contrary to the direction given by the Tribunal in its order dated 11-03-2014;
- (b) The OBC Candidate with Rank NO. 3 who ought to have been treated as a general candidate has been treated as OBC outsider candidate and the candidate with rank NO. 5 had been treated as the first outsider general candidate, to be allotted AGMUT. Had the correct procedure been followed, outsider General vacancy in UP Cadre would have been allotted to the applicant.
- (c) Non following of para 13 of the Guidelines and mixing of the categories for the purpose of cadre allocation is erroneous and the same disturbed the order of allocation, thus deviating from the prescribed method.

5. The respondent has filed a counter affidavit denying all the averments of the applicant made in the OA. After winnowing and sieving the counter affidavit all that could be discerned from the counter affidavit is that the allocation

of the cadre has been done as per the rules. The respondent has further relied upon the case of Union of India & Ors Vs. Rajiv Yadav, IAS & Ors. [1994 (6) SCC 38] wherein the Hon'ble Supreme Court has held that a selected candidate has a right to be considered for appointment to All India Services but he has no such right to be allocated to a cadre of his choice or to his home cadre.

6. The applicant has filed a rejoinder reiterating his earlier stand as made in the OA.

7. Learned counsel for the applicant submits that if the procedure prescribed is religiously followed, then his cadre would have been Uttar Pradesh and even now, the cadre of the applicant can be changed without disturbing the cadre of any other candidates and he has a legitimate expectation to be allotted to the State of UP following due procedure prescribed in OM dated 30/31.05.1985. The fact of his having filed OA No.3562/2013, its disposal vide order dated 11.03.2014 with a direction directed to the respondent to consider his representation by means of a reasoned order and the respondent's rejection of representation leading to filing of the present OA have all been narrated by the counsel for the applicant.

8. Counsel for the respondents has emphatically argued that the cadre allocation has been strictly in accordance with the prescribed guidelines.

9. Arguments were heard and documents perused. The policy in vogue at the time of cadre allocation of the applicant provided for certain specific stages which are as under:-

- (a) First stage is to work out the total number of vacancies at all India level and distribution of the vacancies in each cadre among General and Reserved (comprising of OBC and SC/ST on the basis of prescribed percentage for both the categories).
- (b) Next is to ascertain the number of “insider” and “outsider” vacancy for each category (i.e. General, OBC & SC/ST) on the basis of 30 point roster for which the cycle is in terms of “Outsider-insider-outsider”, “Outsider-insider-Outsider” etc.,
- (c) Allocation of insider vacancies is done strictly according to the ranks, subject to the willingness to be allocated to the home states. In the case of candidates belonging to reserved category such of those candidates who are recommended for appointment against unreserved vacancy and get

allocated to the service against unreserved vacancy are given the benefit of reservation if they get their home state as reserved candidates.

(d) It is after placing insiders at their proper places that allocation of outsider vacancy is considered according to the roster system on the Allocation Chart which is in alphabetical order of the cadres and divided into four groups as provided for in para 6 of the guidelines and the same is as under:-

- (i) *Group-I Andhra Pradesh, Assam-Meghalaya, Bihar, Chattisgarh and Gujarat;*
- (ii) *Group-II Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Kerala and Madhya Pradesh;*
- (iii) *Group-III Maharashtra, Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim; and*
- (iv) *Group-IV Tamil Nadu, AGMUT (UT Cadre), Uttranchal, Uttar Pradesh and West Bengal.*

10. The cycle for the relevant Civil Services Examination year 2007 was to commence from Tamil Nadu, followed by AGMUT (UT Cadre), Uttranchal, Uttar Pradesh and West Bengal. Thus the claim of the applicant is to be viewed on the basis of the in the systematic arrangement, as aforesaid, provided for in the cadre allocation process.

11. Counsel for the respondent has made available the relevant records which have been perused. It is observed

therefrom that the insider vacancies were filled up, on the basis of rank obtained, and the same is Rank No. 1, 04, 08, 12 and 40. Further, invoking the provisions of para 9 of the 1985 Guidelines, five more candidates at rank No. 02,, 15, 21, 35 and 39 were also allotted their respective home states as insiders. Thus, in so far as candidates above the rank of the applicant (i.e. Rank No. 06), three have been afforded their home state i.e. 1, 2 and 4. Thus there were 2 candidates above the applicant, with rank 03 (Shri V. Ramprasath Manohar, an OBC category but high in merit) and 05 (Rahul Jain, General Category) and these are to be allotted the cadre as outsiders, as per the procedure outlined above.

12. It is appropriate at this juncture to furnish the manner in which respondents have prepared the panel. First is the allocation of vacancies to various states (cadres). The following is the statement of allocation of vacancies to various Cadres:-

<i>Name of the State</i>	<i>Proposed Allocation</i>	<i>UR</i>	<i>OBC</i>	<i>SC/ST</i>
<i>Andhra Pradesh</i>	<i>1</i>	<i>-</i>	<i>1</i>	<i>-</i>
<i>Assam-Meghalaya</i>	<i>2</i>	<i>1</i>	<i>1</i>	<i>-</i>
<i>Bihar</i>	<i>2</i>	<i>1</i>	<i>1</i>	<i>-</i>
<i>Chhatisgarh</i>	<i>2</i>	<i>1</i>	<i>-</i>	<i>1</i>
<i>Gujarat</i>	<i>2</i>	<i>1</i>	<i>1</i>	<i>-</i>
<i>Haryana</i>	<i>1</i>	<i>-</i>	<i>1</i>	<i>-</i>
<i>Himachal Pradesh</i>	<i>2</i>	<i>1</i>	<i>1</i>	<i>-</i>
<i>Jammu & Kashmir</i>	<i>2</i>	<i>1</i>	<i>-</i>	<i>1</i>
<i>Jharkhand</i>	<i>1</i>	<i>-</i>	<i>1</i>	<i>-</i>
<i>Karnakata</i>	<i>1</i>	<i>-</i>	<i>1</i>	<i>-</i>
<i>Kerala</i>	<i>1</i>	<i>-</i>	<i>-</i>	<i>1</i>

Madhya Pradesh	1	-	1	-
Maharashtra	2	1	-	1
Manipur-Tripura	2	1	-	1
Nagaland	2	1	1	-
Orissa	2	1	-	1
Punjab	2	1	1	-
Rajasthan	1	-	1	-
Sikkim	1	-	1	-
Tamil Nadu	2	1	-	1
Union Territory (AGMUT)	2	1	-	1
Uttrakhand	2	1	1	-
Uttar Pradesh	2	1	1	-
West Bengal	2	1		1
Total	40	16	15	9

It could be observed from the above that the cadres/states have been afforded the vacancies both in respect of Unreserved and Reserved (OBC and SC/ST).

13. In the next stage, details of “insider” and “outsider” vacancies have been worked out. The Guidelines provide for working out the insider vacancies by invoking the formula of O-I-O, O-I-O and so on. Thus, if the vacancy falls under ‘insider category’ then accordingly such vacancies are filled up allotting the home state. In addition, para 9 of the 1985 guidelines provide for exchange of vacancies which reads as under:-

“9. If a general candidate is not available to fill general insider vacancy then it is filled by an insider SC/ST candidate provided there is an SC/ST outsider vacancy available in that cadre to facilitate exchange. If SC/STG insider candidate is not available or SC/ST outsider vacancy is not available in that cadre then the general vacancy is filled by insider OBC candidate with the same condition that there must be an outsider vacancy to facilitate the exchange. Similarly, the insider OBC vacancy, if not filled due to non-availability of insider OBC candidate is first filled by an insider SC/ST candidate and then by insider

general candidate with the same conditions. An unfilled insider SC/ST vacancy is first filled by insider OBC candidate and then by a general insider candidate with the same conditions.”

Accordingly for the year 2007 CSE, the recommendation was five insiders by direct allocation against the “insider” quota (1,4,8,12 and 40), and five (2,15,21,35 and 39) by way of exchange as contemplated in para 9 of the Guidelines.

14. As per the respondents, after positioning all the insiders, others have been accommodated as outsiders in accordance with the provisions as contained in the 1985 guidelines. The statement below would reflect the allocation of selected individuals to various cadres:-

Rank No.	Name	Category	Home State	Cadre allocated
1	Ms. M. Subashri	GEN	Tamil Nadu	Tamil Nadu
2	Ms. Basu Kaushal	GEN	Himachal Pradesh	Himachal Pradesh
3	V. Ramprasath Manohar	OBC	Tamil Nadu	Uttar Pradesh
4	Amit Kumar	GEN	Bihar	Bihar
5	Rahul Jain	GEN	Haryana	AGMUT
6	Parshand Dhanda	GEN	Haryana	Assam-Meghalaya
7	B.Vivekananda Reddy	GEN	Andhra Pradesh	Chhattisgarh
8	Tripti Sah	GEN	West Bengal	West Bengal
9	Prabuddha H.R.	GEN	Karnataka	Gujarat
10	Mohamed Diwan Mydeen	OBC	Tamil Nadu	Andhra Pradesh
11	B. Niveditha	OBC	Tamil Nadu	Haryana
12	Vasantha Reddy K.V.	OBC	Karnataka	Karnataka
13	Sree Lakshmi Annabathula	GEN	Andhra Pradesh	Maharashtra
14	Patruni Rajendra Naidu	OBC	Andhra Pradesh	Jharkhand
15	Saket Badola	GEN	Uttarakhand	Uttarakhand

16	Honnareddy N	GEN	Karnataka	Manipur-Tripura
17	Prasanna Kumar B.K.	GEN	Karnataka	Nagaland
18	Sanjeet Kumar	GEN	Bihar	Orissa
19	Ajit Kulkarni	GEN	Karnataka	Punjab
29	Akhilesh Kumar Kashyap	GEN	Bihar	Uttar Pradesh
21	Syed Nadeem Hussain	GEN	Jammu & Kashmir	Jammu & Kashmir
22	Sushil Kumar	OBC	Bihar	Madhya Pradesh
23	Bhoopathi. R	OBC	Tamil Nadu	Rajasthan
24	S. Elamurugannan	OBC	Tamil Nadu	Sikkim
25	Dilraj Prabhakar	SC	Uttar Pradesh	Chhattisgarh
26	Vasanthan.B	OBC	Tamil Nadu	Assam-Meghalaya
27	Nesamani.K	OBC	Tamil Nadu	Bihar
28	Malathi Priya.M.	OBC	Tamil Nadu	Gujarat
29	Kiran Babu Vasanta	OBC	Andhra Pradesh	Himachal Pradesh
30	M. Sudhagar	OBC	Tamil Nadu	Punjab
31	Kannan.K	OBC	Tamil Nadu	Uttarakhand
32	Santhosha G.R.	OBC	Karnataka	West Bengal
33	M. Muthukumar	SC	Tamil Nadu	Jammu & Kashmir
34	Karthireyan.K	SC	Tamil Nadu	Kerala
35	Narwane Gajendra Prakash	SC	Maharashtra	Maharashtra
36	Wangoup Bhutia	ST	West Bengal	Manipura-Tripura
37	Ch.Padma	SC	Karnataka	Tamil Nadu
38	T. Ashok Kumar	SC	Tamil Nadu	Orissa
39	Rongsenlemla Imchen	ST	Nagaland	Nagaland
40	Nyali ETE	ST	Arunachal Pradesh	AGMUT

15. The cycle for cadre allocation of outsiders, admittedly, commences with Tamil Nadu, followed by AGMUT, Uttranchal, Uttar Pradesh, West Bengal, followed by the ext cycle of Andhra Pradesh, Assam & Meghalaya etc., The vacancy position as per the allotment of vacancies made in respect of Tamil Nadu, U.T. (AGMUT), Uttranchal and Uttar Pradesh is as under and these have been filled up by

persons with the ranks as mentioned in bracket against each:-

<i>S No</i>	<i>State</i>	<i>UR</i>	<i>OBC</i>	<i>SC/ST</i>
1	TAMIL NADU	1(1)		1(37)
2.	AGMUT	1(5)		1(40)
3.	UTTRANCHAL	1(15)	1(31)	
4.	UTTAR PRADESH	1(20)	1(3)	
5.	WEST BENGAL	1(8)		1(32)
6.	ANDHRA PRADESH	-	1(10)	-
7.	ASSAM & MEGHALAYA	1(6)	1(26)	

(Bold ones are insiders)

16. We are concerned only with the cadre allocation under the “outsider” category and here again in respect of UR category. Except Andhra Pradesh, each cadre had one Unreserved vacancy. As could be seen from the above tabulation, UR vacancies of Tamil Nadu, Uttranchal and West Bengal cadres have gone to insiders as per the priority clause provided for in the guidelines. Rest to be filled up by outsiders of general category in the order of the above sequence and in the order of merit are as under:-

<i>Sl No</i>	<i>Name and Rank</i>	<i>Native State</i>	<i>Cadre allotted</i>	<i>Cadre as per guideline</i>
1.	V. Ramprasath Manohar (3)	Haryana	Uttar Pradesh	AGMUT
2.	Rahul Jain (5)	Haryana	AGMUT	Uttar Pradesh
3.	Prashant Danda the Applicant (6)	Haryana	Assam & Meghalaya	Assam & Mechalaya

17. The contention of the applicant is that Shri V. Ramprasath Manohar (03) has been erroneously treated as OBC though he came in merit against a General Category and thus, Rahul Jain (5) has been treated as the first candidate to be allotted against the 'outsider' general category. Once the Ramprasath Manohar is treated as a General Candidate, then he would not be accommodated as OBC against the Uttar Pradesh Cadre but would have been the first outsider general candidate in which, he would have been accommodated against AGMUT vacancy and UP would be available to the applicant.

18. The above contention of the applicant has to fail for reason more than one. For, as per the provisions of the guidelines, a reserved candidate, who has been selected in general category on the basis of his merit position, does not cease to be a reserved category simply because he opted preference from a reserved category. The Hon'ble Supreme Court in **Union of India & Anr. Vs. Satya Prakash & Ors. (2006) 4 SCC 550**[Appeal (Civil) No.5505-5507 of 2003 decided on 05.04.2006] dealt with the controversy centred around the effect of reserved category candidate being selected in the general category. The Apex Court has held as under:-

"18. By way of illustration, a reserved category candidate, recommended by the Commission without

resorting to relaxed standard (i.e. on merit) did not get his own preference “say IAS” in the merit/open category. For that, he may opt a preference from the reserved category. But simply because he opted a preference from the reserved category does not exhaust the quota of OBC category candidate selected under the relaxed standard. Such preference opted by OBC candidate who has been recommended by the Commission without resorting to the relaxed standard (i.e. on merit) shall not be adjusted against the vacancies reserved for the Scheduled Castes, Scheduled Tribes and Other Backward Classes.

19. The above decision was referred to in a Constitutional Bench judgment in Union of India vs Ramesh Ram (2010) 7 SCC 234 which dealt with the following questions:-

- I. Whether the reserved category candidates who were selected on merit (i.e. MRCs) and placed in the list of general category candidates could be considered as reserved category candidates at the time of “service allocation”?
- II. Whether Rules 16(2), (3), (4) and (5) of the CSE Rules are inconsistent with Rule 16(1) and violative of Articles 14, 16(4) and 335 of the Constitution of India?
- III. Whether the order of the Central Administrative Tribunal was valid to the extent that it relied on Anurag Patel v. U.P. Public Service Commission² (which in turn had referred to the judgment in Ritesh R. Sah v. Dr. Y.L. Yamul³, which dealt with reservations for the purpose of admission

to postgraduate medical courses); and whether the principles followed for reservations in admissions to educational institutions can be applied to examine the constitutionality of a policy that deals with reservation in civil services.

After detailed consideration, the Constitution Bench in para 59 of its judgment has held as under:-

“59.....Therefore, Rule 16 protects the interests of a reserved category candidate selected in the general (unreserved) category by giving him the option either to retain his position in the open merit category or to be considered for a vacancy in the reserved category, if it is more advantageous to him/her.

“In the present case, the Commission recommended one to one vacancy, altogether 737 candidates against 737 posts. Against the OBC category 174 candidates were recommended against 174 posts. By opting a preference, the quota reserved for OBC candidate does not exhaust. There are still vacancies after allocation of all the candidates in order of preference who can be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allotted to the services/posts in accordance with their preference. This is the mandate of the note appended to Rule.”

20. It emerges from above that four OBC candidates, who had been included in the general list had the liberty to opt preference s per their entitlement OBC list for allocation of the quota. The applicant has proceeded on the assumption that any reserved candidate having once been included in the general list, will be subject to the general list alone and

he has no further option, which is not so, in view of the above decision. Thus, allocation of Uttar Pradesh Cadre to Shri Ramprasat Manohar (Rank No. 03) cannot be faulted with.

21. Secondly, independent of the above, even if Ramprasat Manohar is treated as the first general outsider candidate and AGMUT being the first available Cadre for cadre allotment of outsider under the current cycle, and thus he may be accommodated against AGMUT, then again, the next cadre State in the alphabetical order being Uttar Pradesh (as other cadre of Uttaranchal having no vacancy under this category).it is only the aforesaid Rahul Jain that would be allotted Uttar Pradesh and not the applicant. However, Rahul Jain has not challenged his cadre allocation.

22. The applicant thus, cannot be accommodated against the UP Cadre as per the 1985 guidelines. Since none of his vested right is hampered, and his claim of allotment of UP Cadre not having been based upon any statutory provision, this application has to fail.

23. Though the respondents are to prepare a separate list as per para 13 of the guidelines, non preparation of separate panel has in no way resulted in prejudice to the

applicant as even if the same be prepared, the applicant's claim of allotment of Uttar Pradesh would not be available to them. Accordingly, the same is dismissed. Of course, it goes without saying that the findings in this case will not adversely affect the rights of non-parties.

24. Under the above circumstances, the OA is dismissed.

No cost.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/Ahuja/