

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A.NO.060/01509/2018

Orders pronounced on: 19.03.2019
(Orders reserved on: 14.03.2019)**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Agam Singh Bedi,
aged 24 years,
son of Gurminder Singh Bedi,
resident of House No. 194,
Sector 21-A,
Chandigarh,
Pin-160021
(Group A).

Applicant

(Argued by: **MR. D.S. PATWALIA, SR. ADVOCATE, WITH
MR. KANAN MALIK & A.S. CHADHA, ADVOCATES).**

Versus

Union of India through
Secretary of Govt. Of India,
Ministry of Personnel, Public Grievance and Pensions,
Department of Personnel & Training
(Training Division),
North Block,
New Delhi-110001.

Respondent

(Argued by : **MR. SANJAY GOYAL, ADVOCATE, SR.CGSC)**

ORDER
SANJEEV KAUSHIK, MEMBER (J)

1. Applicant Agam Singh Bedi, who successfully cleared Civil Services Examination (CSE) of 2017, has invoked the jurisdiction of this Tribunal under section 19 of the Administrative Tribunals Act, 1985, seeking issuance of direction to the respondents to revise the Service Allocation List of CSE, 2017 (Annexure A-2), by changing service allocated to him from IRS (CGCE) to IRS (IT), in the wake of two vacancies which have fallen vacant on account of non-joining of selected candidates who were allocated IRS (IT), and applicant is eligible and next in number for the same, as per his merit and preference made therefor.

2. The relevant facts of the case, which led to filing of the instant O.A, are that the Union Public Service Commission (UPSC) issued a notice dated 22.2.2017 (Annexure A-1), for conducting Civil Services Examination (hereinafter to be referred to as "CSE"), 2017, to fill up 980 vacancies in All India Services, as defined under All India Service Act, 1951, including Indian Revenue Service (Income Tax) [for short "IRS (IT)"] and Indian Revenue Service (Custom and Central Excise) [hereinafter to be referred to as [IT(C&CE)]]. The number of vacancies came to be increased subsequently to 1058. Out of these posts, 180 were for IRS and 41 were for IRS (C&CE). The break-up of vacancies is given in statement, Annexure A-2. The applicant was a candidate in the aforesaid examination in general category. At the time of filling up of application form, the candidates are required to mention their preferences for services, they intend to join in order of priority. The applicant gave option, in order of preference, for Indian Administrative Services, Indian Police Services, Indian Foreign Services, IRS (IT) and IRS (&CE) respectively. The result of the CSE, 2017 was declared on

27.4.2018 (Annexure A-4), in which 990 candidates were recommended for appointment to All India Services. The applicant was placed at Sr. No. 332 of the list.

3. In the next step, the Selection Allocation List (for brief "SAL") of selected candidates of CSE, 2017, was issued on 31.7.2018 (Annexure A-5), in which name of the applicant was mentioned at Sr. No. 311, with merit No.332. The respondents issued a letter dated 3.8.2018 (Annexure A-8), to all the recommended candidates of CSE, 2017, nominating them for 93rd foundation course, which was to be held during 27th August to 7th December, 2018. This course is an integral and important part of the probation of the candidates that have been recommended for appointment to All India Services. However, one could seek exemption from attending the course in three specific circumstances namely, if one had appeared for a subsequent CSE and cleared the same; was suffering from some medical condition or had successfully completed the foundation course in a previous selection. The applicant had already applied for CSE, 2018 and cleared it on 14.7.2018 and as such he sought exemption, vide letter (Annexure A-9).

4. In accordance with his merit, the applicant was allocated to IRS (C&CE). Against the name of the applicant in SAL, an asterisk (*) has been marked indicating that service allocation qua him is provisional and there is chance for up-gradation of the same. The respondent issued second SAL on 14.8.2018 in which again there was asterisk, meaning thereby his allocation was still provisional in nature and he could be upgraded. However, another SAL was issued on 24.8.2018 (Group 'A'), containing the name of the applicant, but asterisk mark was missing this time. The applicant was informed vide letter dated

24.8.2018 (Annexure A-7), that as per his preference and ranking, he has been allocated to Indian Customs and Central Excise Service (ICCES) Group 'A'. It was also mentioned that he was required to undergo the foundation course before appointment, which is important component of probationary training.

5. The respondent had uploaded two lists (Annexures A-10 and A-11). Former mentions the name and rank of a person who had opted to undergo the indicated foundation course and later includes names of candidates, who had sought exemption and name of applicant was mentioned in exemptees list. It is pleaded that even after commencement of foundation course, SAL was changed twice firstly on 25.9.2018 and again on 20.11.2018 (Annexure A-12). It indicates that it was final as no asterisk mark was mentioned against names of anyone. The applicant was then issued appointment letter dated 27.11.2018 (Annexure A-13).

6. The claim of the applicant, in so far as relevant, for decision of this case is that it has come to his knowledge that two candidates, higher in merit than applicant in CSE, 2017, namely Mr. Tuhin Sinha and Mr. Albert John, who had secured rank No.281 and 327 respectively and were allotted IRS (IT) in general category had also cleared CSE, 2016, they were allocated IPS and they joined that service. Extract of notification in that connection is enclosed as Annexure A-14. They had never joined 93rd foundation course nor sought any exemption from attending the same and having joined IPS, two vacancies have arisen in IRS (IT). It is also apparent from letter dated 8.12.2018 (Annexure A-15). The applicant as well as one Mr. Ankush Kumar at Sr. No.331, are next in merit and are eligible for up-gradation / change from their current service to IRS (IT). The representation submitted by applicant

to upgraded him to IRS (IT) has failed to evoke any response, hence the instant O.A.

7. The respondent has filed a reply. It is submitted that service allocation of the candidates, recommended by UPSC is completed in various iterations of service allocation. This is because many parameters, like temporary unfit on medical grounds, UPSC provisional status, remains unresolved for substantial period (maximum six months). As and when the status of a candidate is cleared, his service allocation is done and the candidate is required to join the service as per the concerned Cadre Controlling Authority's directions / notices in this regard. The nominated candidates for Foundation Course are directed to join it compulsorily. If someone resigns or does not join the service, the vacancy is carried forwarded to the next recruitment year by concerned CCAs because if it is utilised by upgrading service of down below candidates, it will upset the whole chain of service allocation and it will be a never ending process. The service allocation is dependent on rank in the merit list, preferences for various services, medical status availability of vacancies in his category at his turn. Change in one service allocation leads to change in allocation of service of other candidates. The movement takes place in many services. If instant claim is accepted, it would open a pandora's box and may result in multiple litigation in different foras, leading to insurmountable administrative inconvenience etc.

8. As per DoPT OM dated 7.2.1986(Annexure R-1), un-filled direct recruitment quota vacancies are to be carried forward and carried to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to usual practice. The

selection in question is a time bound process and is to be completed in an annual cycle. The respondent cannot engage itself in collecting and recollecting the information from various Cadre controlling Authorities regarding the pots that remain unfilled because of non-joining of certain candidates. A similar claim was rejected by Principal Bench of this Tribunal in O.A.No.361/2007 titled **ANSHOO PANDEY & OTHERS VS. UOIETC.** vide order dated 8.2.2008, which was upheld in W.P. No. 4998 of 2008 by Hon'ble Delhi High Court dated 21.10.2010. Thus they have prayed for dismissal of the O.A.

9. We have heard the learned counsel for the parties at length.

10. Mr Patwalia, learned Senior Advocate, appearing for the applicant argued, that in this case the allocation of cadre was not final and the two vacancies having arisen at interlocutory stage, and as such the applicant had a right of consideration for up-gradation to IRS (IT) in view of choice given by him and more so when his such right was protected by the respondent department itself by indicating asterisk against his name. In that view of the matter, the objection taken by respondents does not stand to any reasons and Instructions or decision in the case of Anshoo Pandey (supra) does not help the respondents, in any manner, whatsoever. This was resisted by equal force by learned senior standing counsel for the respondents on the ground that in such like selection process to premier services, the principle of finality to things has to be maintained and selection cannot be kept as an on-going process as people keep on seeking exemption from foundation course and or even resigning from allocated cadres.

11. We have minutely considered the submissions made by learned counsel for the parties and examined the material on the file.

12. A conjunctive perusal of the pleadings available on record goes to show, that certain facts are uncontroverted, beyond any shadow of doubt, that indeed the applicant had qualified CSE, 2017 and in order of preference, he had chosen for IRS (IT) and IRS (C&CE) as 4th and 5th choice, IAS, IPS and IFS being 1st, 2nd and 3rd respectively. The name of the applicant in the SAL was at Sr. No. 311 with Merit Position as 332. It is also not in dispute that SAS was issued on 31.7.2018 (Annexure A-5) in which against name of applicant, asterisk was mentioned which in turn meant that his allocation was provisional and he stood a chance of up-gradation, consequent upon indeterminate medical status etc. of some of the candidates, who were higher than such candidates. This position of applicant was shown in SAL dated 14.8.2018 also. However, the asterisk was removed in SAL dated 24.8.2018 (Annexure A-6). Vide letter dated 24.8.2018 (Annexure A-7), the respondent informed applicant about allocation of ICCES Group A Service and foundation course was to be undergone by the applicant.

13. It is also not in dispute that undergoing foundation course for joining allocated service is a condition precedent. However, in certain circumstances, one can be granted exemption. The applicant having qualified subsequent CSE, 2018 (Preliminary) had sought and was granted exemption from such course. It is also not in dispute that two named candidates namely Mr.Tuhin Sinha and Mr. Albert John allotted to IRS (IT) never joined and in fact out of CSE, 2016, they had been allocated to IPS and they appears to have joined that service, as they never shown their intention to join IRS (IT) out of CSE, 2017, against two slots which have remained vacant, as can be seen from the documents available on record, particularly, Annexure A-15, where despite offering appointment to the selected candidates, those two

candidates did not opt to join allocated service and they opted for some other service out of different select list. Thus, it is not even pleaded by respondents that these two candidates requested to retain their lien against the slots of IRS (IT) against the select list 2017. These facts are also not disputed by the respondent in the written statement. Thus, once the respondent itself had mentioned that the allocation of cadre of applicant could undergo a change, upto 14.8.2018. Thus, one can conclude that in view of the willingness shown by the respondents themselves, the applicant had a right of consideration for up-gradation of his choice as indicated two slots were never consumed by appointment of anyone as allottees — neither underwent any foundation course nor joined the cadre and instead joined IPS out of CSE, 2016 examination. Thus, the claim of the applicant cannot be defeated only on the ground that such a change would result in administrative chaos or would open Pandora's Box, which is otherwise not because only those who have given option in that service have to be considered. Since the applicant is next in number, therefore, there would not be any administrative chaos, and apprehension entertained by respondents is misconceived.

14. A lot of emphasis was laid by respondent on OM dated 7.2.1986 (Annexure R-1). A perusal of the same shows that it provides for general principles for determining the seniority of various categories of persons employed in Central Services. It provides that unfilled direct recruitment quota vacancies be carried forward and added to the corresponding direct recruitment vacancies of the next year. One cannot dispute about these instructions but the fact of the matter is that there was inclination shown by respondents towards the applicant that his preference can be upgraded and in these circumstances, the

general instructions indicated above, would not apply to the facts of this case, more so when candidates to whom slots of IRS (IT) were allotted, never joined and thus these slots were never consumed and eligibility of the applicant for up gradation of choice was not even disputed by the respondents. Their defence, is that if his claim is allowed, it would result in chaos and administrative difficulties and it would be a never ending process. The defence taken by them, to us, appears to be after thought and does not inspire any confidence. Unless, slots are consumed by appointment, the same were vacant and were to be offered to candidates next in merit which in this case was applicant, so his right of consideration for up-gradation cannot be taken away by respondents as it would be against the principles of justice, equity and good conscience.

15. The reliance placed by the respondent on the case of Anshoo Pandey (supra) also misconceived. In that case, candidate joined the post and had undergone the foundation course, therefore, rightly the Hon'ble High Court denied benefit to petitioner because vacancy was consumed, therefore, no claim could have been raised against the same. In this case, however, the applicant did not undergo foundation course. Against his name, there was specific remark that his up-gradation can undergo a change due to reasons mentioned therein. If those reasons or circumstances had arisen due to non-joining of two candidates allocated to IRS (IT), then indeed the right of applicant for consideration had to be allowed by respondents and it could not be defeated only because it may cause administrative inconvenience.

16. It is well settled law that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. It has been hither to

uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods or modes of, performance are impliedly and necessarily forbidden. When the respondents have themselves indicated that up gradation of applicant can go a change, then they cannot be allowed to back out and claim that it is not permissible, at all. They have not shown any rule or instructions to indicate as to what procedure is to be followed in such like cases, except relying upon decision of the Principal Bench, indicated above. legal proposition is based on a legal maxim "Expressio unius est exclusio alterius", meaning thereby that if a statute provides for a thing to be done in a particular, then it has to be done in that manner and in no other manner and following other course is not permissible. This maxim has consistently been followed, as is evidence from the cases referred to above. A similar view has been reiterated in **CHANDRA KISHORE JHA V. MAHAVIR PRASAD AND ORS.**, (1999) 8 SCC 266; **HARESH DAYARAM THAKUR V. STATE OF MAHARASHTRA** and Ors., (2000) 6 SCC 179; **DELHI ADMINISTRATION V. GURDIP SINGH** and Ors., (2000) 7 SCC 296; **DHANAJAYA REDDY V. STATE OF KARNATAKA ETC. ETC.**, (2001) 4 SCC 9 and **COMMISSIONER OF INCOME TAX, MUMBAI V. ANJUM M. H. GHASWALA AND ORS.**, (2002) 1 SCC 633.

17. In any case, the respondents are estopped from their own act and conduct in claiming that acceptance of prayer of applicant would result in administrative chaos. The mention against name of applicant that his preference could upgrade, indicates that there was indeed a provision for doing so and right of the applicant cannot be defeated on unnecessary objections.

18. Having said that, it would be pertinent to mention here that in fact the identical issue, as raised in this case, with similar objection as raised by respondent herein, was considered by our own jurisdictional High Court in CWP No. 83 of 2017 titled **NAVKIRAN SINGH RANDHAWA VS. STATE OF PUNJAB & OTHERS**, decided on 9.2.2017. In that case also two persons, who were higher in merit did not join within the stipulated time and as such claim was raised that petitioner was entitled to be appointed against resultant vacancy being next in merit. The objection raised was that if any deviation is made by allocation to vacant slot, it may result in complicating the whole process, as is the stand in this case. Rejecting the stand taken by State of Punjab, it was held that since allocated candidates had already given up their claim against the post of Tehsildar, thus, petitioner having given his preference for the post of Tehsildar instead of ETO, was entitled to be appointed as Tehsildar, being within the unfilled vacancy in view of settled proposition of law in the case of **STATE OF JAMMU AND KASHMIR AND OTHERS VS. SAT PAL**, (2013) 11 SCC 737.

19. In the wake of aforesaid discussion, this O.A. is allowed. The respondent is directed to allocate applicant from IRS (C&CE) to IRS (IT), view of availability of indicated vacancies, as per his merit and preference made. The needful be done within a period of fortnight from the date of receipt of a certified copy of this order. The parties are, however, left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: 19.03.2019

HC*