

(2002) 04 JH CK 0076
In the Jharkhand High Court
Case No : Civil Review No. 10 of 2002

Ashutosh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-04-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114

Citation : (2002) 04 JH CK 0076

Hon'ble Judges : Vinod Kumar Gupta, C.J.; Vishnudeo Narayan, J

Bench : Division Bench

Advocate : Jitendra Singh, A.K. Pandey and Rajiv Kumar Singh, for the Appellant; P.K. Prasad, Sr. CGSC, Md. Shamim Akhtr, SC II, A.K. Sahay, JC to SC II, A. Allam, Rajesh Kumar Singh and Aparesh Kumar Singh, for the Respondent

Judgement

1. In this review application these five petitioners have sought a review of our Judgment passed on 26.2.2002 in W.P, (S) No. 6006 of 2001. That writ petition had arisen from out of an order passed by the Central Administrative Tribunal. These writ petitioners had approached the Tribunal challenging the Notification dated 11.6.2001. issued by the Central Govt. in which the allocations of the writ petitioners and respondent Nos. 5 to 12 to Bihar and Jharkhand cadres of the Indian Forest Service (IPS) were altered. The petitioners were returned to Bihar Cadre of IPS (after originally being allocated Jharkhand Cadre), whereas respondents No. 5 to 12 were allocated Jharkhand Cadre (after originally being retained in Bihar Cadre). While dismissing the writ application, we had taken note of the Roster System as had been formulated and adopted by U.C. Agarwal Committee, based on the guidelines issued by the Central Government. Our entire judgment was based practically on a singles point and that was the earlier wrong inclusion of S.B. Gayakwad in the open General Category, whereas he actually belonged to SC/ST Category and later on by detection of this mistake, his exclusion and the consequential change in the place-merit positions of the officers in the Roster Blocks of 4 officers each. In other words, what we had observed was that because every officer whose name figured at Sl. No. 3 in

every such 4. Officers Roster Block was to be retained in Bihar Cadre, because of the exclusion of S.B. Gayakwad. the placements in the Roster Block got altered, thus shifting the position of the petitioners to Sl. No. 3 in every such Roster Block.

2. In this Review Application, the petitioners have drawn our attention to the affidavit filed on behalf of the Union of India before the Central Administrative Tribunal. Particular reference is invited to the averments contained in Para "18" of that affidavit. Our attention has also been drawn to the guidelines issued on the subject. It is contended that after allocating nine officers in Direct Recruit insider Quota (five belonging to the General Category and four to the Reserved Categories), there remained a "gap" of 23 in DR Insiders Quota of Jharkhand and that this "gap" had to be filled up from out of the officers willing to serve in Jharkhand drawn from all categories, namely, Insiders Bihar and Outsiders Bihar. who had been left behind in Bihar after the initial round of allocation. As per the aforesaid affidavit of the Central Government there were exactly 23 such officers, who had opted for Jharkhand Cadre and to fill up the aforesaid "gap" all such 23 opted were allocated Jharkhand cadre. The grievance of the petitioners is that the petitioners also had a right to exercise their option. They say that they actually exercised such an option. The right to exercise the option being available, the petitioners options were not considered. This according to the petitioners is a new ground which they discovered after going through the aforesaid affidavit filed on behalf of the Union of India before the Central Administrative Tribunal. Additionally, it is contended that the aforesaid guidelines were also not available to the petitioners and that these were supplied to them only on 24.2.2002. Annexure "11" to the Review Application (at page 135) is the list of 23 officers styled as "DR Insider (Residual Bihar) left in Bihar. who were willing to serve in Jharkhand and were considered for filling the deficit/gap in "Insider Jharkhand" quota".

3. The aforesaid contentions of the petitioners may be right; these may not be correct. But the fact remains that these contentions, perhaps, indicate that a new cause of action might have accrued in favour of the petitioners. Whether such a new cause of action has actually accrued to them or not is not for us to comment upon. We are making those observations, only to hold that the remedy of the petitioners is not by invoking our review jurisdiction. In the facts and circumstances, the Review Application is held not maintainable because no ground warranting the review of our judgment dated 26.2.2002 is made out. In our considered view, the remedy of the petitioners may lie elsewhere. It may be by way of seeking redressal of grievances through alternative means. Even though, therefore, we are not inclined to entertain this Review Application, we would have no hesitation in issuing an appropriate direction to meet the ends of justice.

4. The petitioners are at liberty to make a fresh representation to the Central Government seeking redressal of grievances on the aforesaid lines and on the basis as indicated hereinabove. If they file such a representation before the

Central Government within two weeks from today, we direct the Central Government to consider the same on its merits and dispose it of in accordance with law within a period of six weeks from the date of its receipt, by passing a speaking order. If the petitioners feel aggrieved in any manner by the aforesaid order that the Central Government may pass on the petitioners' aforesaid representation, they shall be at liberty to approach the Central Administrative Tribunal against such an order. To that extent their fresh petition before the Tribunal may not be hit by res-judicata or the principles of constructive res-judicata. However, in any such fresh petition before the Tribunal, respondents No. 5 to 12 herein cannot be disturbed because any fresh or further change to the allocation of these respondents in Jharkhand cadre shall definitely be hit by res-judicata.

5. The learned counsel for the petitioners submits that till the Central Government disposes of the representation of the petitioners, the petitioners be accorded the interim protection of their continuing in Jharkhand Cadre on the strength of the notification issued on 14.11.2000. This contention is supported by the factual submission that the number of officers in Jharkhand finally posted in IFS Cadre is still short of the actual allocation. Even though we do not wish to pass any order on such prayer of the petitioners, we give liberty to the petitioners to make a representation for the aforesaid purpose to the Chief Secretary, Government of Jharkhand. If such a representation is made within one week from today. We direct that the Chief Secretary may consider the same on its merits and take a decision thereupon, while taking such a decision, the Chief Secretary may be guided. If he thinks it proper, by the fact as to whether there is any short-fall in the number of Officers who actually and physically stand posted in Jharkhand vis-a-vis the allocated cadre strength and as to whether because of such short-fall. The interests of the Government are suffering. While determined such a short-fall (if any), it shall however be kept in mind that the respondents No. 5 to 12 herein have to be accommodated in Jharkhand Cadre in any case. If after keeping in mind that aspect of the matter, the Chief Secretary finds that there is still a short-fall is more than five, he may consider the desirability of retaining the petitioners in Jharkhand cadre till the disposal of that regularisation by the Central Government.

6. With the aforesaid observations/directions, the review application is disposed of. No order as to costs.