

(2007) 07 DEL CK 0256

In the Delhi High Court

Case No : Writ Petition (C) No. 5622 of 1999

Ashwini Kumar Rai

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-07-2007

Acts Referred:

Administrative Service (Cadre) Rules, 1954 — Rule 5, 5(2)

Civil Services (Appointed by Competitive Examination) Regulations, 1955 — Regulation 7

Constitution of India, 1950 — Article 226

Citation : (2007) 98 DRJ 423

Hon'ble Judges : Manmohan Sarin, J;Aruna Suresh, J

Bench : Division Bench

Advocate : Sandeep Sethi and Reetesh Singh, for the Appellant; Atul Bandhu and Suresh Kait for Respondent No. 1 and Sujit K. Singh, for the Respondent

Final Decision : Allowed

Judgement

Aruna Suresh, J.—Present Writ Petition has been filed by the petitioner Ashwini Kumar Rai challenging the order dated 29th July, 1999 of the Central Administrative Tribunal (hereinafter referred to as CAT), Principal Bench, New Delhi passed in O.A. No. 564 of 1994 titled "Ashwini Kumar Rai v. Union of India whereby prayer of the present petitioner for allocation of Madhya Pradesh Cadre to him was declined.

2. In brief, the facts of the present writ petition are that Shri Ashwini Kumar Rai, was appointed to the Indian Administrative Service (hereinafter referred to as IAS) when he successfully appeared in the Civil Services Examination, 1989. He ranked 52 in the All India Merit List and was appointed in the 1990 batch of IAS. The respondent No. 2 Ms. Sarda Muraleedharan, who belonged to Kerala State ranked 51 in the said merit list. There were 9 vacancies in the State of Bihar, out of these 3 were earmarked for insider in order to maintain 1:2 ratio of insider and outsider. The petitioner who hailed from Bihar could not be allocated to the State cadre of Bihar because he did not figure in the top 3 positions in the insider

cadre for Bihar and was accordingly placed in the outsider cadre. Following the roster system as per Rule 5 of the Indian Administrative Service (Cadre Rules, 1954), the petitioner was to be allocated to the State cadre of Madhya Pradesh as an outsider but he was allocated the State cadre of Kerala.

3. In the 1990 batch 4 vacancies were available in the State of Kerala out of which one was earmarked for insider. The respondent No. 2, who hailed from Kerala, having secured 51 rank was not entitled to be allocated the State cadre of Kerala as insider as per the principle of Roster system in view of insider candidate holding a higher rank than her.

4. Respondent No. 1 Union of India, allotted the petitioner to the State cadre of Kerala vide its impugned DO letter No. 13013/15/90-AIS (1) dated 22.11.1990. The departure was done with a view to accommodate the respondent No. 2 who belonged to Kerala and was allocated the State cadre of Kerala. Under the circumstances, the petitioner should have been allotted to the State cadre of Madhya Pradesh as an exchange with the candidate next below her. Petitioner made representation dated 27.08.1991 for allotment of State cadre of Madhya Pradesh. This representation was rejected on 12.11.1991. Aggrieved by the DO letter dated 22.11.1990 and communication letter dated 12.11.1991, petitioner filed O.A. No. 564/1994 before the CAT, Principal Bench, New Delhi. The said OA was dismissed on 29th July, 1999, hence the present Writ Petition before us.

5. Respondent No. 1 has refuted the claim of the petitioner inter alia on the grounds that no fundamental right or vested right of the petitioner has been violated for judicial review under Article 226 of the Constitution of India. The petitioner has no right to claim allocation to a State of his own choice or to his home State as the Central Government is under no legal obligation to have option or the preference from the officer concerned. It was also averred that the petitioner underwent mandatory training pertaining to language, land laws of his parent cadre, Kerala and is continuing in the said State cadre till date and also that the interim order dated 1.10.1992 of the Tribunal in OA No. 2581/1991 filed by the respondent No. 2 does not give any right to the petitioner for claiming allocation to Madhya Pradesh cadre and it is for the respondent No. 1 in consultation with the concerned State to decide as to which cadre should be allocated to which of the officers so selected and Therefore, the Writ Petition deserves dismissal. The learned Counsel for the respondent No. 1 has also referred to Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, and Union of India (UOI) Vs. Mhathung Kithan and Others, .

6. Contentions of the learned Counsel for the petitioner are:

(i) The petitioner has impugned the order of the CAT and has contended that the respondent No. 1 without caring for the request of the Kerala State's letter dated 16.11.1991 showing its inability to give acceptance for provisional allocation to the petitioner to Kerala State and allocation of Kerala State to respondent No. 2 as an insider to make the deficiency existing at the point of time and issued

impugned notification dated 30.12.1991 finally allocating the state cadre of Kerala to the petitioner.

(ii) The principle of Roster system governing distribution of vacancies available for insider and outsider cadre respectively as per distribution in such a way so as to maintain ratio of insider and outsider at 1:2 were not followed while allocating the state cadre of Kerala to the petitioner and also respondent No. 2 as an insider candidate for Kerala.

7. The petitioner has, Therefore, claimed that Madhya Pradesh State which otherwise was falling to the turn of respondent No. 2 who ranked 51 in the merit list had since become available for him by virtue of operation of Rule No. 5 Sub rule (2) which provides for inter change and Kerala having been allotted to respondent No. 2, the petitioner, who ranked 52 in the merit list, was entitled to allocation of State of Madhya Pradesh as the same was available on transfer of respondent No. 2 from the cadre of Madhya Pradesh to State of Kerala.

8. The respondent No. 1. has disputed the claim of the petitioner raising the following contentions:

(i). The Roster system for the cadre allocation, as is prescribed, has been followed in the allocation of cadre of the petitioner. The Roster system has been upheld by the Hon"ble Supreme Court in the case of Union of India and Ors. v. Rajiv Yadav IAS and Ors. (supra).

(ii). The details of the officers allocated to the cadre of Kerala on the basis of CES 1989 was in accordance with the principle of cadre allocation followed by the Central Government as a matter of policy duly communicated to the State of Kerala vide letter dated 31.12.1990 to which the Kerala State agreed vide its letter dated 30.01.1991.

(iii). There is no rule to fill in the backlog insider vacancies in the State. There can not be carry over of insider vacancies if they have not been filled due to non availability of insider candidates at the relevant time.

Therefore, the respondent No. 2 could not have been accommodated for the vacancies which were earmarked for insider in the relevant roster points.

(iv). The respondent No. 1 has consulted the Madhya Pradesh State Govt. and Kerala and it was only after consultation that order dated 7.03.2000 was passed whereby the respondent No. 2 was continued to be allocated in the state of Madhya Pradesh. It was only on the orders of the CAT that the respondent No. 2 was provisionally allotted to Kerala State cadre, Therefore, the Writ Petition deserves dismissal.

9. Before we proceed to analysis the respective submissions of both the parties, we must assess the principle laid down for allocation of cadre in the Indian Administrative Services (Cadre Rules, 1954).

10. Under Rule 5 of the Cadre Rules it is provided as follows:

5. Allocation of members to various cadres.-

(1) The allocation of cadre officers to the various cadres shall be made by Central Government in consultation with the State Government or the State Government concerned.

(2) The Central Government may, with the concurrence of the State Governments concerned transfer a cadre officer from one cadre to another cadre.

11. This rule was interpreted in *Union of India and Ors. v. Rajiv Yadav IAS and Ors.* (supra) as follows:

Rule 5 of the Cadre Rules provides that the allocation of the members of the IAS to various cadres shall be made by the Central Government in consultation with the State Government or the State Governments concerned. Sub-rule (2) of Rule 5 further provides that a cadre officer can be transferred from one cadre to another. When a person is appointed to an All India Service, having various State Cadres, he has no right to claim allocation to a State of his choice or to his home State. The Central Government is under no legal obligation to have options or even preferences from the officer concerned. Rule 5 of the Cadre Rules makes the Central Government the sole authority to allocate the members of the service to various cadres. 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.

12. It is not clear if the principle of allocation as provided in the Roster System have ever been notified by the Central Government. A demi-official letter dated 31.05.1985 from Secretary, Government of India to Secretary, Department of Forests and Wild Life so far as is relevant for the purposes of the present case contains the following terms:

As you are aware, the allocation of the direct recruits to the All India Services, including the Indian Forest Service is being made in accordance with the "Limited Zonal Preferences System" from 1978 examinations and onwards. In this system all the cadres/joint cadres were divided into zones and the candidates were given the opportunity to indicate their preferences zone-wise and also for two cadres in each zone. The allocation was being made keeping in view the rank and preferences of the candidates subject to allocation of vacancies in each cadre between "insiders" and "outsiders".

Our experience has shown that the limited zonal preferences system of allocation suffers from a number of deficiencies. Under this system there is only very limited movement of candidates from one part of the country to another across several States and even this limited inter-regional movement of candidates takes place only in respect of a few low ranking candidates. Another drawback of the system is that "outsiders" getting allocated to a State are mostly from a

neighbouring State.

Keeping in view the deficiency that is noticed in the working of the limited zonal preferences system it has been decided with the approval of the Prime Minister that from 1935-batch onwards (1984 examination candidates) we should revert back to the roster system which was the system of allocation from 1966 to 1977 examination with certain modifications. The broad principles of allocation on the basis of roster system would be as follows:

(1) ...

(2) ...

(3) ...

(4) Allocation of "outsiders" whether they are general candidates or reserved candidates, whether they are men or women, will be according to the roster system after placing "insiders" at their proper places on the chart as explained below:

(i) ...

(ii) Since the number of cadres/Joint Cadres is 21, the cycles will be 1-21, 22-42, 43-63 and so on.

(iii) The "insider" quota should then be distributed among the States and assigned to different cycles of allotment. For example, if a State gets 4 "insider" candidates, they should go to the share of the State in their respective cycles, they should be treated as going to the State in two successive cycles and so on.

(iv) The "outsider" candidates should be arranged in order of merit and allotted to the State cadres in cycles as described in (v) below.

(v) In the first cycle, State Cadre/Joint Cadres which have not received "insider" candidates should be given one candidate each in order of merit of "outsider" candidates. The process should be repeated in successive cycles, each successive cycle beginning with the next successive group of States, e.g., the second cycle should begin from Group II States, the third cycle with Group III States and the fourth cycle with Group iv States and the fifth cycle again with Group I States. Occasionally it may happen that a candidate's turn may come in such a way that he may get allocated to his own home State. When that happens, the candidate next below him should be exchanged with him.

(vi) For the succeeding year, the State cadres should be arranged again in alphabetical order but with Group I of the previous year at the bottom, i.e., the arrangement will begin with Group II on top. In the third year, Group III will come on top and so on.

(vii) ...

13. The Government of India, Department of Personnel and Training issued a

letter dated 30th July, 1984 addressed to the Chief Secretaries of all the States conveying its policy decision and stating various reasons so as to ensure proper balance in the State cadre, the "outsider" element in the direct recruitment quota and it was increased to 66.2/3% or in other words the ratio of 2 : 1 as between outsiders and insiders in place of the recruitment quota at the ratio of 1 : 1 which was being followed earlier. The relevant part of this letter reads as under:

It is proposed to give effect to this decision by ensuring henceforth at the time of allocating candidates appointed to IAS and IPS on the basis of Civil Service Examination, that at least 66.2/3% of the officers are from outside the State concerned.

14. In view of this letter, the Union of India started maintaining 30 point Roster from the examination held in 1983. This Roster follows the cycle, "outsider, insider, outsider, outsider, insider, outsider..." In any given year the roster starts with the point where the roster ended in the previous year.

15. The petitioner successfully appeared in the Civil Services Examination, 1989 and was assigned rank 52 in the all India merit list prepared under Regulation 7 under the Indian Civil Services (Appointed by Competitive Examination) Regulations, 1955. Therefore, he belonged to 1990 batch of IAS for allotment of cadre. Respondent No. 2 was ranked 51. Vide Notification dated 23.11.1990 following the Roster system, present petitioner was allocated to the State cadre of Kerala as an outsider whereas respondent No. 2 Ms. Sarda Muraleedharan, was allocated the State cadre of Madhya Pradesh as an outsider. It seems that respondent No. 2 who hailed from Kerala made a representation for allocation of State cadre of Kerala. As per the demi-official letter dated 31st May, 1985, she could have been allocated the State cadre of Kerala only as an insider. If that is done, the candidate next below to her should be exchanged with her. In this case the Kerala State when consulted was not agreeable to accommodate respondent No. 2 as an insider candidate for the year 1990 for the reasons that person senior to her was available for appointment as insider candidate and was so appointed. It was on her filing the Writ Petition in the CAT that she was successful in getting the order in her favor for consideration of her allocation of State cadre of Kerala. As we understand she is working there as an insider candidate on provisional basis as she has not been finally given the Kerala State cadre.

16. The petitioner who was allocated Kerala State cadre claimed that in view of the rules, he should have been allocated State cadre of Madhya Pradesh which became available on transfer of respondent No. 2 to Kerala State which happened to be near his home State Bihar and for which he had given option. However, his representation was rejected and his Writ Petition by the CAT was also dismissed with the following observations:

We are unable to agree with this reasoning. Applicant was allocated to Kerala

State Cadre in accordance with the cadre allocation guidelines contained in Rule 5 IAS (Cadre) Rules read with D.O. letter dated 30/31.5.85, which have been approved by the Hon'ble Supreme Court in Rajiv Yadav's case (supra). Merely because Respondent No. 2 with whom he was exchanged in accordance with those guidelines had filed O.A. No. 2581/92, in which, after granting of interim directions that she should be posted to Kerala State provisionally, that OA was disposed of by order dated 24.10.97 quashing her allocation to M.P. State Cadre and holding that her continuance in Kerala State Cadre should not be disturbed till respondents passed fresh orders in accordance with law after consulting the State Govt., does not give applicant an enforceable legal right to compel official respondents to allocate him to M.P. State Cadre, which also does not happen to be his home State (Bihar). It must be remembered that official respondents are yet to pass fresh orders regarding the cadre allocation of respondent No. 2, liberty in respect of which was expressly given to them by order dated 24.10.97, and the aforesaid order dated 24.10.97 does not give applicant legally any cause of action.

17. Respondent No. 1 while relying upon Rajiv Yadav's case (Supra) has taken a stand that only the Government has the right to allocate cadre to a candidate and a candidate has no right to ask for allocation of the cadre of his own choice.

18. In para 13 of the paradise reply of the counter affidavit filed by respondent No. 1 it admits that when a candidate's turn may come in such a way that he get allocated to his own home town, the candidate next below him should be exchanged with him. So long as a member of the service is allocated to a State in accordance with the principles of cadre allocation framed by it in larger public interest, the applicant can not have any grievance simply because the cadre allocated to him did not suit him or he wanted to be allocated to his home cadre.

19. Petitioner was initially allocated to Kerala cadre strictly in accordance with the principle of cadre allocation and he joined his services there and still serving in Kerala. However, the Government was given interim directions by the CAT in OA No. 2581/1992 filed by respondent No. 2 that she should be posted to Kerala State provisionally which resulted into quashing of her allocation to Madhya Pradesh cadre. Further directions were given that her continuance in Kerala State cadre should not be disturbed. Respondent No. 1 passed fresh orders in accordance with law after consulting the State Government. Under these circumstances the petitioner has rightly asked for his exchange to Madhya Pradesh cadre on transfer of respondent No. 2 to Kerala State.

20. Deviation has been made by the Government while refusing allocation of Madhya Pradesh cadre to the Petitioner from the directions contained in demi-official letter dated 31st May, 1985. In Rajiv Yadav's case (supra), it was observed that even though a member of All India Services does not have any vested right for allocation to a particular State cadre but then respondents are bound by the rules and guidelines while making allocation to a particular State cadre and respondent has a duty to avoid arbitrary action and to follow rules and

guidelines strictly. In this case there is a violation of the guidelines as already discussed above.

21. The petitioner who ranked at Serial No. 52 has to be considered for exchange with respondent No. 2 on allocation of Kerala State cadre to her and the petitioner who was allocated Kerala cadre to Madhya Pradesh State cadre as initially allocated to respondent No. 2.

22. The CAT had allowed O.A. No. 2227/91 filed by Mr. P.H. Kurian for change of allocation of his cadre because of mistake committed by the Government with regard to allocation of his cadre and he was entitled to be posted at Kerala and another O.A. No. 2226/91 filed by K. Shivaji for change of allocation of his cadre from Kerala to Maharashtra. The Government filed C.W. No. 6533/98 challenging both the orders of the CAT. While dismissing the writ petition it was observed by the Division Bench of this Court as under:

It may be stated that for the purpose of allocation of cadre nobody has a legal right but there cannot be any doubt whatsoever that the IAS Officers had a legal right to be considered for allocation of a cadre in terms of the extant Rules. There are several orders on record which would go to show that for one reason or the other the administration itself had been effecting change in the allocation of cadre and in some cases even after a lapse of number of years.

It was further observed as under:

We are of the opinion that it is not one of such case where the administrative difficulties would prevail over the individual difficulties. Furthermore the grounds upon which the respondent-1's representation has been rejected are wholly irrelevant and not germane for the purpose of passing the said order. It is not in dispute that a number of similar orders have been issued by the petitioner. In each and every case, a similar question could have arisen. If training in the local language and/or laws prevailing in one State did not stand in the way of the petitioner in issuing changes in the allocation of cadre in the cases of large number of persons, we are of the opinion that the same could not have been used as a ground to refuse to correct the mistake which the petitioner on the administrative side should have considered. Keeping in view the facts and circumstances of this case and particularly in view of the fact that in the event the judgment of the learned Tribunal is upheld, no serious or grave prejudice would be caused to the petitioner herein, we are of the opinion that this is not a fit case wherein this Court should exercise its discretion and jurisdiction under Article 226 of the Constitution of India. We place on record that, had this Court been satisfied that the order of the Tribunal would have a cascading effect and/or would have led to administrative chaos, we would not have hesitated to interfere with the impugned judgment. As we are satisfied, that no such administrative difficulties would result in the instant case, we refuse to exercise our discretion/jurisdiction in exercise of power under Article 226 of the Constitution of India. For the reasons aforementioned, the Writ Petition is dismissed.

23. In our view the facts and circumstances of the present case are similar to the one which were under consideration before the Division Bench of this Court.

24. Respondent No. 1 urges that petitioner has undergone mandatory training pertaining to language, land laws of his parent cadre and has been allocated to the cadre of Kerala since 1990. Madhya Pradesh happens to be a Hindi speaking State and the petitioner who hails from Bihar is well conversant with this language and this should not pose any hindrance. Even otherwise there have been instances where persons having received mandatory training in the regional language and local laws, have been transferred from one cadre to another. The court generally does not interfere with the discretion exercised by the cadre allocation authorities but the case before us has resulted in invidious discrimination and injustice to petitioner. Even the representation of the petitioner rejected by the respondent No. 1 is not based on sound and germane grounds.

25. We are of the view that setting aside of the order of the Tribunal would not have any cascading effect or lead to any unsurmountable administrative difficulty. Hence, in view of the discussion as above, the present Writ Petition is allowed. We understand, the writ filed by Union of India against the order of 24th October, 1997 of the CAT is pending consideration before the Kerala High Court. Respondent No. 1 Union of India is directed to allocate the Madhya Pradesh cadre to the petitioner provisionally as allotted to Respondent No. 2, subject to the outcome of the writ petition filed by the Union of India pending in the Kerala High Court against the judgment of the CAT dated 24.10.1997 allotting the Kerala cadre to respondent No. 2.