

(2001) 11 AHC CK 0096
In the Allahabad High Court
Case No : Writ Petition No. 476 (S/B) of 2001

Laxmi Singh (Ms.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-11-2001

Acts Referred:

Police Service (Cadre) Rules, 1954 — Rule 5

Citation : (2002) 1 UPLBEC 623

Hon'ble Judges : M. Katju, J; Kamal Kishore, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Katju, J.—The petitioner is an IPS direct recruit of 1999 batch. It is alleged that she is the first and only lady officer trainee to have been adjudged all-round best probationer in the history of the Indian Police Service. She is also the only lady officer trainee in the police to have commanded the passing out parade and was awarded Prime Minister's Baton and Home Ministry Revolver by the Vice President of India.

2. The petitioner's grievance was that she was allocated West Bengal Cadre although she had opted for UP. Cadre of I.P.S. The petitioner approached the CAT which has rejected her claim petition by the impugned order dated 14.3.2001. Hence this petition.

3. It has been alleged in paragraph 5 of the petition that the petitioner was declared successful in the Civil Services Examination, 1999 and she obtained rank No. 34 and was second in the order of merit. By the order dated 14.8.2000 the petitioner was informed that she has been selected in the IPS vide Annexure 2 to the writ petition. Subsequently by the order dated 30.9.2000 she was allocated West Bengal Cadre of IPS. In paragraph 8 of the petition the petitioner has alleged that she opted for U.P. Cadre while filing her application from. Hence, under the roster system for allocation of cadres and under Rule 5 of IPS Code

Rule 1954, she should have allocated U.P. Cadre. However, by notification dated 12.9.2000 she was allocated West Bengal Cadre. In paragraph 9 the petitioner has quoted the relevant principles for allocation of Cadre according to the vacancies in the ratio of 2:1 for outsiders and insiders. In paragraph 11 of the petition it is stated that there were only two vacancies in U.P. Cadre of IPS and hence the first vacancy should have gone to an outsider and the second to an insider. Since the petitioner was the first amongst the insider candidates she should have been allocated U.P. Cadre. The petitioner made a representation in this connection vide Annexure 5 to the writ petition. However, when nothing was done she approached the Central Administrative Tribunal which has rejected her petition.

4. The version of the respondents has been given in their counter affidavit filed before the Tribunal, copy of which is Annexure 6 to the writ petition. A reference has been made in that counter affidavit to the decision of the Supreme Court of Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, , where it has been held that a person has no right to claim allocation to a State of his choice or his Home State since allocation of cadre is an incidence of service.

5. In paragraph 1 of the said counter affidavit it has been stated that as per vacancy roster both the vacancies to be filled up in IPS Cadre of U.P. from the Civil Services Examination, 1999 were meant for outsider candidates and hence the petitioner could not be allocated to the U.P. Cadre. In paragraph 7 of the counter affidavit it is alleged that for filling up the vacancies of each Cadre of IPS in the ratio 2:1 a thirty point vacancy roster is maintained. Vacancies in each Cadre in the Civil Services Examination are filled up as per roster points of this roster. The roster point in this thirty point vacancies roster has been explained in paragraph 7 of the said counter affidavit and it has been stated that according to this roster the petitioner could not be allocated to the U.P. Cadre of IPS.

Rule 3 (1) of the IPS (Cadre) Rules 1954 states : "There shall be constituted for each State or group of States an Indian Police Service Cadre".

6. Rule 4 (1) states "The strength and composition of each of the cadres constituted under Rule 3 shall be as determined by regulation made by the Central Government in consultation with the State Government in this behalf, and until such regulation are made shall be as in force immediately before the commencement of these rules."

7. Rules 5(1) states "The allocation of cadre officer to the various cadres shall be made by the Central Government in consultation with the State Government or State Government concerned."

8. Under these rules the Central Government has prepared a roster system which has been quoted in paragraph 9 of the writ petition. Clause 1 of this roster system states "The vacancies in every cadre will be earmarked for "outsiders and insiders in the ratio of 2:1 in order to avoid problems relating to fractions and to ensure that this ratio is maintained over a period of time, if not during every

allocation, the break-up of vacancies in a cadre between "outsiders and insiders" will be calculated following the cycle of "outsiders", "insiders", outsiders".

9. While it is true that as held by the Supreme Court in Rajiv Yadav's case (supra) a person has no right to claim allocation of a particular cadre, at the same time this does not mean that the Government can act arbitrarily in this regard. As held by the Supreme Court in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, arbitrariness violates Article 14 of the Constitution. Hence the allocation of the cadre has to be done in a non-arbitrary manner.

10. It is to be noted that the roster system, as quoted in paragraph 9 of the writ petition reference is made to vacancies and not to posts. The distinction between the vacancies and posts is well known. The allocation of selected candidates is done on the basis of the roster system against the vacancies and not against posts. Hence, in each year the vacancies have to be determined and the roster system applies to the same. However, that does not seem to have been done in this case by the respondents. A perusal of paragraph 7 of the counter affidavit of the respondent filed before the Tribunal shows that they have mixed the vacancies of 1998 and 1999, which in our opinion was illegal. Each year's vacancies have to be separately determined and allocation made on that basis and the authorities cannot mix up the vacancies of two separate years for making allocation. Admittedly for the 1999 Examination there were two vacancies in the U.P. Cadre of IPS. Had there been three vacancies there would have been no difficulty because one vacancy would have been allotted to an insider candidate. The question arises as to what happens if there are only two vacancies. In our opinion, when there are only two vacancies one of the vacancies has to be given to an insider. The reason for this is that in the roster system two third of the vacancies are to be allotted to the outsiders i.e. 66.7% of the vacancies. If there are two vacancies and one is allotted to an insider that means an outsider gets only 50% seats. However, if both these two vacancies are allotted to outsiders that means that outsiders get 100% seats. Since the figure 66.7 is closer to the figure 50 as compared to the figure 100, in our opinion, the only reasonable view that can be taken is that when there are two vacancies one is to be allotted to an insider candidate.

11. It may be mentioned that the roster system itself contemplates fractions as is evident from Clause (1) of the same, and hence the only reasonable view is that which we have taken above.

12. Hence in our opinion, the respondents were wrong in allocating both the vacancies of U.P. Cadre in IPS to the outsiders. Hence the stand of the petitioner appears to be correct.

The writ petition, is therefore, allowed. The impugned Judgment dated 14.3.2001 as well as the orders allocating the petitioner to West Bengal Cadre are quashed. Since the petitioner was highest amongst the selected insider candidates of U.P. hence the seat in U.P. Cadre for insider had to be allotted to her. We direct

accordingly. However, since two outsiders have been working in U.P. Cadre we are not disturbing their allocation to U.P. Cadre in the special circumstances of the case.

13. No order as to costs.