

(2015) 11 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : CWP No. 2086 of 2009

Manu Maharaaj

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 16(4)

Citation : (2016) LabIC 164

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Sureshwar Thakur, J.

Bench : Division Bench

Advocate : Bipin C. Negi, Senior Advocate and Arush Matlotia, Advocate, for the Appellant; Ashok Sharma, Assistant Solicitor General of India and Ajay Chauhan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.

1. The writ petitioner, by the medium of this writ petition, has called in question the judgment and order, dated 24.10.2008, passed by the Central Administrative Tribunal, Chandigarh Bench (for short "the Tribunal") in O.A. No. 617/HP/2006, titled as Shri Manu Maharaj versus Union of India (Annexure P-5) (for short "the impugned judgment") and has also sought writ of mandamus commanding the respondents to consider the case of the writ petitioner for allotting him the Himachal Pradesh Cadre in terms of his option, on the grounds taken in the writ petition.

2. The writ petition, on the face of it, merits to be dismissed. However, it stands admitted, calls for detailed and speaking judgment.

Brief facts:

3. The writ petitioner participated successfully in the Civil Services Examination, 2004, in the discipline of Indian Police Services and was allotted Bihar cadre,

which constrained him to file representation, was rejected, constraining him to approach the Tribunal by the medium of the Original Application on the grounds, which are enumerated in para 5 of the said Original Application, as under:

"5.I) That since the applicant while appearing in the Civil Services examination has opted for the allocation of the Home cadre and he was allocated the Bihar cadre. The respondents have rejected the representation of the application on a wrong criteria, since the applicant appeared in the examination as a General Candidate and not as a OBC Candidate and his rank was in the All India Merit list was 132. The respondents rejected the case of the applicant that since the applicant belongs to OBC category candidate and as such he could not be given the vacancy meant for General category candidate. The vacancies filled up in the IPS cadre of H.P. was to be filled up against an outside roster point meant for general category candidate, but the respondents rejected the claim of the applicant as an insider candidate from Himachal Pradesh belonging to O.B.C. category and as such he was not eligible for allocation to I.P.S. cadre of Himachal Pradesh.

II). That the rejection of the representation of the applicant is illegal for allocation to Himachal Pradesh, as the applicant belongs to general category candidate and as per the merit list pertaining to the H.P. he was to be on the list and as such was eligible for allocation to the Himachal Pradesh cadre.

III). That even the respondent No. 2 has no objection regarding allocation of probationers to the IPS cadre of State on the basis of Civil Services Examination, 2004 (2005 batch). The respondent No. 1 has allotted only 1 IPS officer to the respondent No. 2 and one more IPS probationer is yet to be allocated to the respondent No. 2, as such the request of the applicant can be acceded to for which the applicant prays."

4. No other ground was pressed into service and the relief sought was to direct the respondents to consider the case of the writ petitioner.

5. The respondents resisted the Original Application by the medium of reply. The specific pleas have been taken in paras 3 to 7 of the reply.

6. The Tribunal examined the pleadings and the law applicable, held that the writ petitioner has no right to seek allotment of any particular State. It is the prerogative of the respondents in terms of the mandate of the Rules and policy read with the judgments made by the Apex Court.

7. The Tribunal has rightly made discussions from paras 2 to 5 of the impugned judgment and thereby dismissed the Original Application. It has also discussed the mandate of the judgment delivered by the Apex Court in the case titled as Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, .

8. The writ petitioner has tried to build up a case, by the medium of the writ petition, which he has not projected in the Original Application before the Tribunal. It was not the case of the writ petitioner that an undeserving candidate,

who was lower in merit, has been allotted Himachal Pradesh cadre, he was highest in merit and was entitled to the said cadre. But what he has sought for is to direct the respondents to consider his case.

9. Can the Court direct the respondents to consider the case of the writ petitioner, while keeping in view the mandate of the Rules and policy applicable read with the Apex Court judgment in Rajiv Yadav's case (supra)?

10. The answer is in the negative for the following reasons:

11. It is apt to reproduce paras 5 and 6 of the judgment rendered by the Apex Court in Rajiv Yadav's case (supra) herein:

"5. We have given our thoughtful consideration to the reasoning and the conclusions reached by the Tribunal. We are not inclined to agree with the same. Rule 5 of the Cadre Rules provide 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. It is not obligatory for the Central Government to frame rules/regulations or otherwise notify "the principles of allocation" adopted by the Government as a policy. The letter dated 31-5-1985 shows that the Central Government has always been having guidelines either in the shape of "limited Zonal preferences system" or "Roster System" for the exercise of its discretion under Rule 5 of the Cadre Rules. Simply because the principles of allocation called "Roster System" were not notified, it is no ground to hold that the same are non est and the Central Government cannot follow the same. In any case the "Roster System" has stood the test of time. It was operative during the years 1966 to 1977 and again it is being followed from 1985-batch onwards. The fact that the "Roster System" is being followed in practice by the Central Government for all these years is in itself a sufficient publication of its principles.

6. 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. The principles of allocation as contained in Clause 2 of the letter dated 31-5-1985, wherein preference is given to a Scheduled Caste/Scheduled Tribe candidate for allocation to his home State, do not provide for reservation of appointments or posts and as such the question of testing the said principles on the on the anvil of Article 16(4) of the Constitution of India does not arise. It is common knowledge that the Scheduled Caste/Scheduled Tribe

candidates are normally much below in the merit list and as such are not in a position to compete with the general category candidates. The "Roster System" ensures equitable treatment to both the general candidates and the reserved categories. In compliance with the statutory requirement and in terms of Article 16(4) of the Constitution of India 22 1/2% reserved category candidates are recruited to the IAS. Having done so both the categories are to be justly distributed amongst the States. But for the "Roster System" it would be difficult rather impossible for the Scheduled Castes/Scheduled Tribes candidates to be allocated to their home States. The principles of cadre allocation, thus, ensure equitable distribution of reserved candidates amongst all the cadres."

(Emphasis added)

12. Viewed thus, the writ petitioner has no right to claim cadre of his choice or home State.

13. Learned counsel for the writ petitioner has relied upon the judgment rendered by the Apex Court in the case titled as C.M. Thri Vikrama Varma Vs. Avinash Mohanty and Others, , which is not applicable.

14. The said judgment is outcome of the decision of the High Court of Andhra Pradesh, where the case projected was that the writ petitioner in that case was higher in merit and was entitled, as per the Roster, to allotment of his home cadre, but he was shown door and another candidate of the same State, who was below in the rank, was allotted the home cadre. The aggrieved writ petitioner filed representation, approached the Tribunal, but without any success, was constrained to file writ petition, which was allowed vide judgment and order, dated 22.03.2007, which was subject matter of the Civil Appeal before the Apex Court. It is apt to reproduce paras 18 to 20 of the Apex Court judgment in C.M. Thri Vikrama Varma's case (supra) herein:

"18. In Para 6 of the judgment in Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, , the Court explained that in compliance with the statutory requirements and in terms of Article 16(4) of the Constitution, 22 1/2% reserved category candidates are recruited to the IAS and having done so, both the categories are to be justly distributed amongst the States. The Court also held that when a person is appointed to the 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 and the Central Government is under no legal obligation to have options or even preferences from the officer concerned and Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954, made the Central Government the sole authority to allocate the members of the service to various cadres.

19. This position of law was reiterated in Union of India (UOI) Vs. Mhathung Kithan and Others, . The Court, however, has not held in Rajiv Yadav or in Mhathung Kithan that such authority of the Central Government can be exercised arbitrarily or in a manner which is not equitable to the general or reserved category candidates selected for appointment to an All India Service. On the

contrary, the Court has held in *Rajiv Yadav* that the roster system as contained in the letter dated 31.05.1985 ensures equitable treatment to both the general candidates and the reserved candidates.

20. In fact, the object of the principles of allocation indicated in different clauses in the letter dated 31.05.1985 is not only to implement the policy having 2 outsiders and 1 insider in each cadre, but also to ensure that general and reserved candidates selected and appointed to the All India Service get a fair and just treatment in the matter of allocation to different cadres. This will be clear from clause (2) of the letter dated 31.05.1985 which states that the vacancies for Scheduled Castes and Scheduled Tribes in the various cadres should be according to the prescribed percentage and from clause (3) which states that the allocation of insiders, both men and women, will be strictly according to their ranks, subject to their willingness to be allocated to their home States. This will also be clear from clause 4 (vii) which explains how the candidates belonging to the reserved category and the general category will be dealt with. These principles have been laid down in the letter dated 31.05.1985 because while making allocations of different candidates appointed to the service to different State cadres or Joint cadres, the Central Government has also to discharge its constitutional obligations contained in the equality principles in Articles 14 and 16(1) of the Constitution. A member appointed to the All India Service has no right to be allocated to a particular State cadre or Joint cadre, but he has a right to a fair and equitable treatment in the matter of allocation under Articles 14 and 16(1) of the Constitution."

15. Keeping in view the facts and relief sought, the ratio is not applicable to the instant case.

16. Learned counsel for the writ petitioner argued that as per the table given in the reply before the Tribunal and discussed by the Tribunal, two vacancies were available in the subsequent year also and the writ petitioner was entitled to his home cadre. The argument is misconceived for the reason that it is the prerogative of the respondents to allot the cadre and mere shortfall in the Home State is no ground.

17. The same issue was raised before the Apex Court in the case titled as *Union of India versus Mhathung Kithan and others* with *Union of India versus Kumari Bindhyeshwari Negi and others*, reported in (1996)10 Supreme Court Cases 562. It is profitable to reproduce paras 7 and 8 of the judgment herein:

"7. The first respondent has contended that in the batch passing the examination in 1984, when the vacancy was for an insider, no insider was available and the vacancy had been occupied by an outsider. Hence he should be considered for one of the roster points available for the batch of 1985. We have, however, not been shown any rule which provides for a carry-over of "insider" vacancies if they are not filled due to non-availability of insider candidates. In the absence of any such rule for carry-forward of insider vacancies. We do not see how the first

respondent can be accommodated in the vacancies which are earmarked for outsiders as per the relevant roster points.

8. In the policy statement of 30-7-1984, a reference was made to the fact that State service officers who get promoted to IAS/IPS are in the age group of 40 to 50 and at that late stage, their transfer to another State cadre may give rise to personnel and administrative problems of adjustment. Therefore, in order to restore the outsider-insider balance in a State cadre, it was proposed that the outsider element in the direct recruitment quota required to be increased. In this context it is difficult to accept the contention of the first respondent regarding carry forward of "insider" vacancies. The roster is framed bearing in mind this requirement of increasing outsiders in the quota of Direct Recruits. The policy requires that at least 66-2/3% of the officers who are directly recruited are from outside the State concerned. It does not impose a ceiling of 66-2/3%. The Tribunal was, therefore, not right in disturbing the implementation of this policy as per the roster."

(Emphasis added)

18. The writ petitioner is virtually seeking writ of mandamus commanding the respondents to allot him the Home Cadre. It is their prerogative and they maintain roster system and it is their duty to see as to which cadre is to be allotted to which candidate, the Court cannot interfere with the same.

19. Having said so, the Tribunal has rightly passed the order, is well reasoned and legal one, needs no interference.

20. Accordingly, the impugned judgment is upheld and the writ petition is dismissed alongwith all pending applications.