

**(2002) 02 DEL CK 0042**  
**In the Delhi High Court**  
**Case No : CW 1991 of 2001**

Mohit Yadav

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 26-02-2002

**Acts Referred:**

**Citation :** (2002) 8 AD 210

**Hon'ble Judges :** S.B. Sinha, C.J.;A.K. Sikri, J

**Bench :** Division Bench

**Advocate :** Ranjit Rao, for the Appellant; T.V. George, for the Respondent

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## **Judgement**

S.B. Sinha, C.J.—The original applicant before the Central Administrative Tribunal (hereinafter called "the Tribunal" in short) is the writ petitioner. He filed an application before the Tribunal for a direction upon the respondents that he be allotted in the Indian Police Service and be sent for training or in the alternative, be allotted in any other service according to rank with effect from the due date with all consequential benefits, pay and allowances and continuity of qualifying service etc.

2. The petitioner belongs to Other Backward Community. In the Civil Services Examination, 1999, he was assigned rank No. 352. His preference for allotment to various services was:

1. IAS 8. IAAS
2. IPS 9. IDAS
3. IFS 10. IOFS
4. IC & CES 11.I.POSTAL SERVICE
5. IRS 12 ICAS
6. CBI 13. Case

## 7. IIS

3. A note was appended to the Rule 2 of Examination Rules which reads thus:

"2. A candidate shall be required to indicate in his/her application form for the Main Examination his/her order of preference for various services/posts for which he/she would like to be considered for appointment in case he/she is recommended for appointment by Union Public Service Commission.

A candidate who wished to be considered for IAS/IPS shall be required to indicate in his/her application in he/she would like to be considered for allotment to the State, which he/she belongs in case he/she is appointed to the IAS/IPS.

NOTE- The candidate is advised to be very careful while indicating preferences for various services/posts. In this connection attention is also invited to Rule 18 of the Rules. The candidate is also advised to indicate all the services/posts in the order of preference in his/her application form. In case he/she does not give any preference for any services/posts, it will be assumed that he/she has no specific preference for those services. If he/she is not allotted to any one of the services/posts for which he/she has indicated preference, he/she shall be allotted to any of the remaining services/posts in which there are vacancies after allocation of all the candidates who can be allocated to a service/post in accordance with their preference."

4. The contention of the petitioner is that from 1994 onwards, 27% reservation had been made for OBCs after 1998 whereas in 1999, only 19.4% seats had been reserved.

5. The learned Tribunal dismissed the application inter alias on the ground that he opted for limited service wherein he could not be adjusted having regard to the rank assigned to him in the examination.

6. It is accepted that for the purpose of distribution of vacancies, 200 point roster is enforced. 411 vacancies were notified out of which 234 were earmarked for general candidates, 97 for OBC, 53 for SC and 27 for ST candidates. The allocation of the service is done on merit as also performance of the candidates for various services. It is not in dispute that 300 candidates had been allotted in Group A and B services.

7. The contention of the petitioner is that had 27% reservation for OBC candidates been made ten posts would have been reserved and thus, the petitioner could have been accommodated; whereas the contention of the respondents is that 54 OBC's had attained higher merit than the applicants who have been allotted the Indian Police Service on the basis of their preferences. The last man who was allotted the said post of IPS was holding 232nd rank whereas the applicant was holding the 352nd rank. On the basis of the prescribed rules, comparison is not done on an annual basis inasmuch as the reservation would exceed 50% in a year. It is contended that in 1998 a decision was taken to change the reservation roster to a post for reservation. While

changing over to post basis roster it was found that there was an excess of 3 OBCs of 1998 and the same was sought to be adjusted against 1999 vacancies.

8. Rule 18 of the Civil Services Examination Rules is in the following terms:

"Due consideration will be given at the time of making allocation on the results of the examination to the preferences expressed by a candidate for various services at the time of his application. The appointment to various services will also be governed by the Rules/Regulations in force as applicable to the respective Services at the time of appointment.

Provided that a candidate who has accepted the allocation to a service on the basis of an earlier examination shall be eligible on the basis of this examination to be allocated only to those service (s) post (s) which were higher in the order of preference in his/her application form for the examination on the basis of which/she had been last allocated to a service."

9. The learned Tribunal has held that having regard to the model roster prepared, the roster points from 1 to 36 had been consumed at the time of filling up of vacancies of IPS through CSE, 1998. For the last five years, 388 candidates had been actually appointed out of which 197, 105, 57 and 29 belonged to General, OBC, SC and ST categories respectively. It was found that category-wise roster points from 37 to 72 were:

General - 18 OBC - 10 SC - 05 ST - 03

10. It was held that 52 points from roster had been reduced as recruitment of CSE 1994 was made as against 88 vacancies. In the year 1994, recruitment to IPS through CSE 1999 was made against only 36 vacancies and on that basis, the model roster had been reduced from 388 to 336. It was noticed that:

Actually in position Requirement as per roster points.

General- 168 171 OBC- 93 90 SC- 49 50 ST- 26 25

It was further held by the Tribunal as under:

"8. From the above facts as available in the records, we find that the allegation of non-adherence to 27% reservation for OBC is not correct. The respondents have followed the prescribed 200 point roster, the provisions of Rule 2 & 18 and adjustment of shortage of 3 un-reserved candidates against excess of 3 OBC candidates which need not have been scattered over more than one year. We also find that whereas the last candidates of the OBC category who indicated preference for IPS and Indian Ordnance Factory Service Group-A were 232 and 350 respectively, there were several OBC candidates who ranked higher than the applicant and could not be accommodated in the IPS. From the records, it is also established that barring in 1998, the number of candidates actually appointed in IPS each year between 1994 and 1997 was fewer than the number of vacancies notified/candidates allocated."

11. The respondents in their counter-affidavit did not traverse the contention of the petitioner in his application as regards non-following the 200 per cent roster. In that view of the matter, the learned Tribunal must be held to have committed illegality in arriving at the afore-mentioned finding.

12. Furthermore, having regard to the policy decision adopted by the respondents, the number of vacancies could not have been reduced to 36. Out of 36 vacancies, 13 having already been reserved for the OBC candidates and thus, only 10 posts in that category could not have been filled up.

13. There, thus, being no dispute that the declared policy of State is that there would be 27 per cent reservation for OBC candidates, the same ought to have been strictly followed.

14 In R.K. Sabharwal and others Vs. State of Punjab and others, , the apex court observed:

"4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates compete for the non-reserve posts. and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State Government to make any provision for the reservation of appointments or posts in favor of any Backward Class of citizens which, in the opinion of the State is not adequately represented in the Services under the State. It is, Therefore, incumbent on the State Government to reach a conclusion that the " Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats. As mentioned above the roster point which is reserved for a Backward Class has to be filled by way of appointment/promotion of the member of the said class. No general category candidate can be appointed against a slot in the roster which is reserved for the Backward Class. The fact that considerable number of members of a Backward Class have been appointed/promoted against general seats in the State Services may be a relevant factor for the State Government to review the question of continuing reservation for the said class but so long as the instructions/rules providing certain percentage of reservations for the Backward Classes are operative the same have to be followed. Despite any number of

appointees/promotes belonging to the Backward Class against the general category posts the given percentage has to be provided in addition."

15. The learned Tribunal had not considered the afore-mentioned aspect of the matter at all.

16. In *State of Bihar and Others Vs. M. Neethi Chandra and Others*, , the fact was as follows:

17. The case related to admission of students to postgraduate courses in various Medical Colleges in the State of Bihar. The Government of Bihar published a resolution dated 7.2.1992 stating that the candidates belonging to reserved classes who are selected on the basis of merit for admission into professional training institutes would not be adjusted against reserved seats. This has led to a situation where the reserved category candidates who could qualify on merit on par with general category candidates could be allotted to course/college which were not of their choice, evidently, because of their low position in their merit whereas such a choice of college/course was available to candidates qualified for the reserved seats although they were lower in merit position. The High Court of Patna devised a method of allotment of seats by which the reserved seats are offered first (i.e. before the general seats are filled) to the candidates of the reserved category on merit and after all the reserved seats are so filled up, all other qualifying candidates of the reserved category are "adjusted" against the open seats in the general category along with the general merit candidates and offered seats on merit-cum-choice basis. Observing that the method evolved by the High Court is not tun with the principles of equality, the Apex Court held:

"12. If however, the word "adjusted" is read to mean considered along with other general merit list candidates, it will lose much of its value. As per the above illustration, the 5 candidates qualifying on reserved category criteria having not secured enough marks according to general criteria, cannot at all, be allotted any seat in the general category.

"13. At the same time, as pointed out above, all is not well with the Government Circular No. 20 as it operates against the very candidates for whom the protective discrimination is devised. The intention of Circular No . 20 is to give full benefit of reservation to the candidates of the reserved categories. However, to the extent the meritorious among them are denied the choice of college and subject which they could secure under the rule of reservation, the circular cannot be sustained. The circular, Therefore, can be given effect only if the reserved category candidate qualifying on merit with general candidates consents to being considered as a general candidate on merit-cum-choice basis for allotment of college/institution and subject."

18. However, we are not unmindful of the latter decision of the apex court in *Dr. Anil Kumar Vs. State of Bihar and Others*, which was decided in the peculiar facts and circumstances of the said case as therein the admission of the appellant had been permitted and it was held that the settled position need not be unsettled.

19. For the afore-mentioned reasons, we do not agree with the finding of the learned Tribunal. We may note that the official respondents except the Union Public Service Commission had not appeared. The learned counsel for the UPSC would submit that his client is not concerned with the principle of reservation and would take examination and fill up the posts only in terms of directions issued by the State.

20. However, having regard to the fact that this aspect of the matter had not been considered by the Tribunal, we are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The respondents are hereby directed to proceed on the basis as if 27% had been reserved for the OBC and in the event if the petitioner satisfies the requirements of Rules 2 and 18 of the Examination Rules, appropriate order may be passed.

21. This petition is disposed of accordingly without any orders as to costs.