
(2012) 01 DEL CK 0360
In the Delhi High Court
Case No : Writ Petition (C) 4614 of 2000

Puneet Agarwal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-01-2012

Acts Referred:

Citation : (2012) 2 AD 395 : (2012) 189 DLT 401

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : G.D. Gupta, with Mr. S.K. Sharma, for the Appellant; Jatan Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The petitioner herein was selected in Indian Administrative Service in Civil Services Examination (CSE, 1997). He belongs to the General Category and secured fifth position in the combined merit list of the said examination. He was allocated to Manipur - Tripura joint cadre of the IAS. According to him, this allotment of Manipur-Tripura cadre was contrary to the provisions of "principles of cadre allocation" as enumerated in D.O. letter dated 31.5.1985 and on the right application of the aforesaid provisions, he should have been allocated Maharashtra cadre. His representation for change of cadre was turned down vide letter dated 11.8.1998.

2. Challenging the aforesaid decision of the respondent, the petitioner approached the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") by filing OA No.1080/1999 u/s 19 of the Central Administrative Act. His contention, however, has not found favour with the Tribunal, as a result whereof, the Tribunal has dismissed the said OA vide impugned orders dated 16.5.2000.

3. Not satisfied with the outcome, the petitioner seeks judicial review of the

aforesaid orders by means of instant writ petition filed under Article 226 of the Constitution of India. The controversy is in narrow compass and revolves around the following facts:

As mentioned above, the petitioner got into Indian Administrative Service on the basis of Civil Services Examination, 1997. He belongs to 1998 batch. As is well-known, it is an All-India cadre. Those who get selected are allotted different State cadres as per the procedure of allotment and cadre allotment. This procedure of allotment is outlined below:

(i) The vacancies for IAS to be filled up in a year through Civil Services Examination are obtained from all the States/joint cadres and a-200 point roster. The total number of vacancies of General, Other Backward Castes and Scheduled Castes/Scheduled Tribes categories. These are then distributed to the various State/joint cadres for General, OBC and SC/ST categories to keep the total of all cadres same for each category as determined by the 200 point roster.

(ii) The principles and procedure of cadre allotment given in the above-mentioned Circular are briefly summarized below:

(a) The total number of vacancies in a cadre are applied to first 30-point roster to determine the number of vacancies to be filled by inside-State and outside-State candidates. The roster operates as: Outsider, Insider, Outsider repeated by Outsider, Insider, Outsider. The roster works on a continual basis from the previous year.

(b) Another 30-point roster (2nd Roster) is applied to each cadre for the reserved category vacancies (incorporating OBC & SC/ST vacancies) to distribute the vacancies as Outsider, Insider, Outsider and repeated as Outsider, Insider, Outsider. This roster also runs on continual basis from the previous year. The remaining vacancies marked as Insider and Outsider are for General Category candidates.

4. The Apex Court in the case of Union of India Vs. Mahathung Kithan & Ors. [decided on 18.9.1996 in Civil Appeal No.12310/1996] and in Union of India (UOI) Vs. Mhathung Kithan and Others, reiterated the Government's policy that at least 66 2/3% of the IAS officers, who are directly recruited, are from outside the State concerned for all categories. The procedure further stipulates that the allocation of "insiders" will be strictly, according to their ranks, subject to their willingness to be allocated to their home states. The "insiders" quota is distributed among the States and is assigned to different cycles of allotment. For example, if a State gets four "insider" candidates, they will go to the share of the State insider vacancy in their respective cycles. And, if there are two candidates from the same cycle, they are to be treated as going to the State in two successive cycles and so on. The outsider candidates should be arranged in order of merit. In the first cycle, State/joint cadres which have not received insider candidates are given one candidate each in order of merit of outsider candidates. The process is 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 fourth cycle with Group IV States and again fifth cycle with Group I States. Occasionally, if a candidate's turn comes in such a way that he may get allocated to his own home State, if so, the candidate next below him should be exchanged with him. In case of candidates belonging to the Reserved Category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with General candidate for the purpose of allotment though they will be counted against reserved vacancies. For the succeeding year, the State cadres are to 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. In respect of Reserved Category candidates, a procedure similar to the one adopted for the General candidates is to be followed. In other words, a separate chart is to be prepared for Reserved Category candidates against respective category vacancies with similar grouping of States and similar operational details are to be followed.

5. For the 1998 batch, the vacancy list of various cadres giving "insider" and "outsider" vacancies of General, OBC and SC/ST categories was circulated by the Department of Personnel and Training as enclosure to their letter dated 27.5.1998 to the Chairman, UPSC with copy of IAS Academy, Mussoorie. There were 21 States/Joint Cadres which were arranged in alphabetical order in the roster and divided in four groups given below and are repeated in the cycle of 21, i.e., 1-21, 22-42 and so on:

Group I - Andhra Pradesh, Assam-Meghalaya, Bihar and Gujarat.

Group II - Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala and Madhya Pradesh.

Group III - Manipur-Tripura, Nagaland, Orissa, Punjab, Rajasthan and Sikkim.

Group IV - Tamilnadu, Union Territory, Uttar Pradesh and West Bengal.

6. For the Civil Services Examination (CSE) 1997, the cadre allotment started from Group II States. The vacancy chart for the insider and outsider candidates for General, OBC and SC/ST candidates for Group II & Group III States with proposed allotment is as under:

The Master Statement of CSE, 1997 giving ranks, name of candidates, their home state and preference for home State, which is relevant for us, gives the following position:

VACANCY CHART OF GROUP II & III STATES

Sl. No.

State/Cadre

Total Vacancies

General

Reserved Vacancies

Inside

Outside

Inside

Outside

OBC

SC/ST

OBC

SC/ST

GROUP ? II STATES

1.

Haryana

2

1(9)

1

0

0

0

0

2.

Himachal Pradesh

1

0

1(1)

0

0

0

0

3.

Jammu & Kashmir

1

1(2)

0

0

0

0

0

4.

Karnataka

3

1(3)

0

0

0

1

1

5.

Kerala

2

0

1(4)

1

0

0

0

6.

Madhya Pradesh

4

1(15)

1

0

0

1

1

GROUP ? III STATES

7.

Maharashtra

4

0

2(5)

0

1

1

0

8.

Manipur- Tripura

2

1(7)

0

0

0

1

0

9.

Nagaland

1

0

0

0

0

0

1

10.

Orrisa

2

0

2

0

0

0

0

11.

Punjab

2

0

1

1

0

0

0

12.

Rajasthan

3

1(6)

0

0

0

1

1

13.

Sikkim

1

0

1

0

0

0

0

*Figures mentioned within the bracket are the rank nos. of general candidates as per proposed cadre allotment (for candidates upto rank no.5)

7. The aforesaid statement would demonstrate that the candidates who secured first, second and third rank belong to the State of U.P. They had also been given preference for home State. However, there was no inside state General vacancy in the State of U.P. Therefore, they were allotted the cadre of Himachal Pradesh, Jammu & Kashmir and Karnataka respectively. Next available State was the State of Kerala. As per the respondents, first candidate hailing from Kerala was Shri Ashok B. whose name appears at rank 23 in the Master Statement. Though he belongs to OBC category, but since he was falling in the General Merit list and there was one insider vacancy to be filled by OBC category in the same State, State of Kerala was allotted to Shri Ashok B., as per Rules.

8. Candidate at Sl. No.4, viz., Shri. Rajiv Kr. Mittal was allotted Maharashtra cadres as an "outsider". Next in line was the petitioner whose home State is U.P. The next State available for allotment was Manipur-Tripura and it is how the joint cadre of Manipur-Tripura was allotted to the petitioner.

9. According to the petitioner, mistake occurred in allotting Kerala cadre to Shri Ashok B. According to him, since Shri Ashok B. though belonging to OBC category, had qualified as General Category candidate and, therefore, he could not be adjusted against OBC post and, therefore, was not entitled to Kerala cadre. His submission is that had Kerala been not allotted to Shri Ashok B., the same would have gone to Shri Rajeev Kr. Mittal who was allotted Maharashtra cadre and the petitioner being next person in line would have got allotment of Maharashtra cadre.

10. Thus, the entire dispute is as to whether allotment of Shri Ashok B. in Kerala cadre is correctly done or not. If that action of the respondent is correct, the petition has to fail and if Shri Ashok B. is wrongly allotted Kerala cadre, then that

position would have been made available to Shri Rajeev Kr. Mittal and the petitioner is right in submitting that he could have been given Maharashtra cadre.

11. The learned Tribunal has held that Shri Ashok B. was rightly allotted the Kerala cadre as an insider quota being the only OBC category candidate and it has given the following justification.

4. It is not denied that there were two vacancies in Kerala State cadre to be filled as a result of CSE 1997, one insider OBC vacancy and the other outsider general vacancy. Admittedly, respondent No.4 was an OBC candidate who had given his first preference for allocation to his home State of Kerala, and having secured 23rd position in the merit list was allocated to the IAS on general merit. Moreover he was the only candidate from Kerala to qualify in the IAS in CSE 1997, which made him the only eligible candidate to be considered against the insider vacancy in that cadre.

5. That being the position, we see nothing illegal, or arbitrary or contrary to the principles of cadre allocation contained in the relevant rules and instruction including Secretary, DP & A.R. & d.o. letter dated 31.5.85 (Annexure A-5) in allocating Respondent No.4 had not been allocated to his home State of Kerala, he would have been penalized for qualifying on merit, and it would have been in violation of the Hon'ble Supreme Court's judgment in State of Bihar and Others Vs. M. Neethi Chandra and Others, . Furthermore, there was no warranty for respondents to fill the outsider vacancy in the first cycle itself as contended by applicant.

12. Questioning the aforesaid wisdom of the Tribunal, Mr. G.D. Gupta, learned Senior Counsel appearing for the petitioner, argued that as Shri Ashok B. was selected in the General Category for the purpose of allotment, he should have been treated only as a General Category candidate and not OBC candidate, even if he belongs to OBC category. For this purpose, reliance is placed on Para 4(vii) of Cadre Guidelines dated 30/31.5.1985 and it is argued that this Rule specifically mentions that the Reserved candidates in the merit list of the General Category are to be treated at par for the purpose of cadre allotment. Reliance is also placed on Para 4(vii) of the aforesaid guidelines. This para along with para 4 (iv) are reproduced below:

4.....

(i).....

(ii).....

(iii).....

(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).....

(vi).....

(vi) In the case of candidates belonging to the reserved category, such of those candidates, whose position in the merit list is such that they could have been appointed to the service even in the absence of any reservation, will be treated on par with general candidates for purposes of allotment though they will be counted against reserved vacancies. In respect of other candidates belonging to the reserved category a procedure similar to the one adopted for general candidates would be adopted. In other words, a separate chart should be prepared with similar grouping of States and similar operational details should be followed. If there is a shortfall in general "insiders" quota, it could, however, be made up by "insider" reserved candidates.

13. Mr. Gupta also placed heavy reliance on the judgment of the Gauhati High Court in the case of Union of India Vs. J. Symala Rao & Anr. [W.P.(C) No.1574/2004, decided on 09.1.2006]. In that case, J. Symala Rao selected as OBC candidate in CSE, 1996 examination attained rank 34. His home State was Andhra Pradesh. He also opted his home State. However, he was not allotted the "inside" OBC, but the State of Assam cadre and this OBC was converted by exchanging with "outside" General Category vacancy for allotment to one Shri N. Sridhar, another OBC candidate, who was selected as General Category at rank No.29. His home State was also Andhra Pradesh and opted for his Home State. The Tribunal held that even of his rank was higher than Shri N. Sridhar and even when he was also an OBC candidate, he could not have been adjusted against OBC vacancy by converting the same to General vacancy, as Shri N. Sridhar should have been treated as General Category candidate and since in Andhra Pradesh OBC cadre vacancy was available, it should have gone to J. Syamala Rao, who was selected as OBC candidate. While affirming this judgment, Gauhati High Court made the following observations:

11. The above observations of Hon"ble Court does not permit the appellants to flout their self professed rules, or legalise an illegal act as in the present context as higher rank UR candidate is not a good ground to deprive the insider OBC candidate to available insider OBC quota. The Hon"ble Supreme Court did not give any indulgence to the appellant to flout to their own policy to accommodate a higher ranking candidate against OBC quota post. If the post is earmarked for OBC insider, it should go to an eligible OBC insider, even if his position is lower to an UR candidate but the rule does not permit to anyone to side-track this. In a situation where there is no "insider" slot in a particular year for a particular category or candidate, he or she cannot be retained in the home State even though his/her rank is much higher than those category of candidates for who "insider" slots may be available. Thus, ranking is not the sole criteria for allocation in the home State. But the earmarked insider slot which are based on 1985 policy decision as upheld by the Apex Court. The roster, if applied as per rule, could not have offered an OBC insider post to an UR candidate. Such observations of learned Tribunal are correct in our respectful consideration.

12. The learned Tribunal had rightly observed that against one allotted insider OBC, no insider OBC was taken. It appears Shri N. Sridhar a high ranking OBC forfeited his OBC appointment by merit and was categorized and treated as UR candidate by the appellants in their own showing. Learned Tribunal has rightly analysed from the chart that Shri N. Sridhar was actually granted an UR slot to fill up three UR post for Andhra Pradesh i.e. is to say that appellants, for all purposes, accepted him as an UR candidate. In the net result the OBC insider quota post which went by default to be filled from the next insider available candidate was surprisingly, without any rule, procedure or authority, made good by a much low ranking outsider OBC Ahmed Nadeem. The obvious choice for the next below insider OBC to the private respondent was blindly evaded for reasons not clarified. The reasons stated are not legal as by their own showing N. Sridhar, respondent No.3 has been allotted an insider UR quota post.

It is quite clear that against two UR vacancies earmarked for "outsider" only one was allotted i.e. Serial No.1 (Shri Peeyush Kumar). There was no quota for OBC for "outsider" candidate for appointment. Obviously, there was a shortfall of UR "outsider" quota and in its place an OBC "outsider" candidate has been appointed.

xxx xxx xxx

14. From the foregoing facts it is clear that the UR vacancy for "insider" quota, which ought to have gone to Shri N. Sridhar was actually given to him in the chart because of his higher rank. Thereafter, no insider UR post was available to accommodate Shri Sailaja Ramaiyer as an UR insider. Shri N. Sridhar could not have been treated again by any double standard as an "insider" OBC candidate. The OBC post could not be given to an OBC "outsider" candidate as it has been done by appellants herein in utter disregard of their own rules and procedure. In the process, the private respondent No.1 was also deprived of getting accommodation in home State cadre against a clear OBC insider quota, to which he was otherwise eligible. In our considered opinion, internal adjustment of quota for "outsider" and "insider" for reserved and unreserved candidates against declared vacancies to accommodate a favoured candidate cannot be done which has frustrated the very purpose of fixation of quota system itself as per the policy decision of the Govt. of India, on which the appellants themselves have placed their reliance.

14. The respondents, on the other hand, have tried to justify their action by submitting that in order to implement the Cadre Allocation Policy of 1985, the procedure was formulated which is annexed as R-I to the counter affidavit dated 17.8.2011. Para 14 of this procedure states as under:

14. In the case of candidates belonging to reserved category such of those candidates who are recommended for appointment against unreserved vacancy and get allocated to the service against unreserved vacancy are first considered for allocation to their home-States against unreserved insider vacancy. If there is no unreserved insider vacancy, such candidates are given the benefit of

reservation if they get their home state as reserved candidates.

15. It is submitted that this procedure was for internal consumption and has never been issued and because of this reason, it could not be considered by the Gauhati High Court. It was stressed that the basic principle is that the reserved category candidate qualified on General merit should be considered against Unreserved vacancy and he cannot be put in disadvantageous position vis-?-vis other candidate of his own category but lower in rank for service/cadre allocation. It is also stated on oath that the above procedure has been consistently applied for cadre allocation over the years. The said procedure is in the form of guideline, which has been applied consistently both in letter and spirit. But, the same has not been issued/notified. Referring to the judgment in *Rajiv Yadav (supra)*, it is argued that the Supreme Court has upheld not only the principles and guidelines contained in the Cadre Allocation Policy contained in the letter dated 30/31.5.1985, but also the principles and guidelines followed by the Central Government under the "limited zonal preference system" and, roster system.

16. We have considered the respective submissions of both the parties.

17. No doubt, if the judgment of the Gauhati High Court is to be followed, the petitioner should succeed. However, we are not persuaded ourselves to do so. First reason is that the procedure for allotment of cadre to the officers of All India Services annexed with counter affidavit dated 17.8.2001 was not taken into consideration by the Gauhati High Court. No doubt, this was not brought to the notice of the said Court and therefore, the judgment was rendered without noticing the said procedure. However, had that procedure been there before the Gauhati High Court, it would have entailed altogether different results. Para 14 of the said procedure makes all the difference to the outcome. It reads as under:

In the case of candidates belonging to reserved category such of those candidates who are recommended for appointment against unreserved vacancy and get allocated to the service against unreserved vacancy are first considered for allocation to their home-States against unreserved insider vacancy. If there is no unreserved insider vacancy, such candidates are given the benefit of reservation if they get their home state as reserved candidates.

18. No doubt, the respondents have fairly stated that this procedure is neither signed nor circulated. At the same time, it is also categorically mentioned by the respondents that the aforesaid procedure is in the form of guideline, which has been applied consistently both in letter and spirit. There is no reason to disbelieve the statement which is made on oath.

19. Even otherwise, we find due rationale and justification in prescribing such a procedure. When a candidate belonging to reserved category attains high position in merit and because of that reason, he is appointed against unreserved vacancy, for this merit of such a candidate, he should not be made to suffer when it comes to allocation. That is precisely what the procedure seeks to

achieve. This is precisely the reason which weighed the Tribunal also in dismissing the OA of the petitioner. We may also point out that in *Rajiv Yadav (supra)*, the Supreme Court upheld not only the principles and guidelines contained in Cadre Allocation Policy circulated vide letter dated 30/31.5.1985, but also the principles and guidelines followed by the Central Government under the Limited Zonal Preference System. Following observations of the Supreme Court needs to be noted:

The letter dated May 31, 1985 shows that the Central Government has always been having guidelines either in the shape of "limited zonal preference 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 nonest 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.

20. It is also to be kept in mind that in the aforesaid judgment itself, the Supreme Court held that no selected candidate has a right to be allocated to a cadre of his choice or to his home state. This was mandated in the following manner:

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 incident of service.

21. Thus, we are of the opinion that the order of the Tribunal does not call for any interference. We find no merit in this petition, which is accordingly dismissed.