
(2013) 05 DEL CK 0078
In the Delhi High Court
Case No : WP (C) 8623 of 2010

Ramandeep Choudhary

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0078

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Subhro Sanyal with Mr. L.R. Khatana, for the Appellant; R.V. Sinha, Advocate with Mr. A.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog and V. Kameswar Rao, JJ.—The challenge in this writ petition is to the order dated November 24, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) dismissing O.A. No. 934/2009 filed by the petitioner, Ramandeep Chaudhary, who was aggrieved of the fact that having rank 84 in the Civil Services Examination (CSE) 2007 and belonging to the SC Category he had been allotted Bihar Cadre instead of the Home Cadre of Punjab. The issue was debated before the Tribunal with respect to the principles of Allocation of Cadre on the basis of roster system, enunciated by DoPT as contained in a letter dated May 31, 1985, the broad principles whereof would be as follows:-

(i) 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 allocation, the break-up of vacancies in a cadre between "outsiders" and "insiders" will be calculated following the cycle of "outside", "insider", "outsider".

(2) The vacancies for Scheduled Castes and Scheduled Tribes will be reserved in the various cadres according to the prescribed percentage. For purpose of this

reservation, Scheduled Castes and Scheduled Tribes will be grouped together and the percentages will be added. Distribution of reserved vacancies in each cadre between "outsider" and "insiders" will be done in the ratio of 2:1. This ratio will be operationalised by following a cycle "outside", "insider", "outsider" as is done in the case of general candidates.

(3) 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.

(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) All the State cadres/Joint Cadres should be arranged in alphabetical order and divided into four groups which, on the basis of the average over a period of time, are taking roughly equal number of candidates each. On the basis of average intake during the last 4 years, the groups could be as follows:

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

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

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

Group IV: Tamil Nadu, Union Territory, Uttar Pradesh and West Bengal.

(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 and if there are 2, "insider" candidates from the same cycle, 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 III States, the third cycle with Group II States and the fourth cycle with Group I States and the fifth cycle again with Group III 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) 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.

2. Admittedly, the vacancy position in the Punjab Cadre pertaining to the Indian Administrative Service was four as under:-

Insider: 1 General, 1 SC

Outsider: 1 General, 1 OBC.

3. The DoPT allocated the aforesaid four vacancies to the following persons:-

(a) Sh. Suprit Singh Gulati, who was at merit position No. 2 as per the select panel and was a general category candidate and first preference was for the State of Punjab i.e. the State to which he belonged, his allocation was treated as against the one General "insider" vacancy.

(b) Ms. Rupanjali, who was at merit position No. 53 as per the select panel and was a SC candidate and even her first preference was for the State of Punjab i.e. the State to which she belonged, her allocation was treated as against the one "insider" SC vacancy.

(c) Sh. Amit Kumar, who was at merit position No. 89 as per the select panel and was a OBC candidate; and since as we would be noting the facts hereinafter nothing turns with respect to Sh. Amit Kumar's allocation to the Cadre of State of Punjab, neither parties disclosed the facts as to with respect to which preference Amit Kumar was allocated the State of Punjab against the one OBC "outsider" vacancy.

(d) Sh. Joram Beda, who was at merit position No. 223 as per the select panel and was a ST candidate belonging to the State of Arunachal Pradesh, he was allocated State of Punjab Cadre by treating the one General "outsider" vacancy has to be allotted to an ST "outsider" candidate.

4. With respect to the pleadings constituting the Original Application filed by the petitioner, succinctly stated the grievance was that an "insider" reserved vacancy has been shifted as "outsider" reserved vacancy (refer para 4.3 of the O.A. in

which petitioner, inter alia, pleads: "The applicant discovered from the website of the respondent that the insider reserved vacancy of Punjab Cadre has been shifted as outsider reserved vacancy and seems that Sh. Joram Beda has been accommodated to Punjab Cadre as outsider reserved SC/ST candidate." The petitioner thereafter, as would be evidenced from the pleadings in para 4.4 of the Original Application raised issues pertaining to Ms. Rupanjali being allotted Punjab Cadre on the seat of SC "insider". This is evidenced from the following pleadings in said para: "Two vacancies of unreserved outsider and SC insider was filled by Ms. Rupanjali and Sh. Joram Beda. However, it is not clear in what manner and under which provisions of the policy of allocation of cadre as well as the procedure prescribed; these two seats were filled; overlooking the claim of the applicant on the seat of SC insider as the same claim was based on the own policy decision as well as instructions of the respondent."

5. When filed, neither Ms. Rupanjali nor Sh. Joram Beda was impleaded as respondents. Petitioner filed M.A. No. 1338/2009 praying that Ms. Rupanjali and Sh. Joram Beda be impleaded as respondents No. 2 and 3, but while so doing, he specifically stated in para 5 that he was not claiming any relief against Ms. Rupanjali and/or Sh. Joram Beda; given the fact that in case of eventual success of the petitioner their cadre may be reallocated; a statement of fact in paragraph 5 of the application which was self contradictory for the reason choice of a person if maturing into a cadre allocation, if attempted to be upset would amount to claiming a relief against the person.

6. However, from a meaningful reading of the decision dated November 24, 2009 passed by the Tribunal it is apparent that as it came to be ultimately argued, petitioner fought the litigation with reference to the fact that Ms. Rupanjali was allocated Punjab State Cadre for the reserved "insider" vacancy. The primary contention of the petitioner before the Tribunal was, as reiterated before us, that since Ms. Rupanjali had been selected on her own merit she could not have been given the benefit of belonging to SC category for allocation of cadre. In support of his contention reliance was placed by the petitioner on the judgment of the Gauhati High Court in WP (C) No. 1574/2004 UOI vs. J. Syamla Rao & Ors. decided on January 10, 2006.

7. With reference to the facts of J. Syamla Rao's case the Tribunal distinguish the same in para 3 of its opinion, and suffice would be for us to note that before us, said view taken by the Tribunal pertaining to J. Syamla Rao's case not being applicable was not controverted.

8. But relevant would it be to note that the Tribunal took note of the fact that the Gauhati High Court, probably for the reason it was not brought to its notice, did not consider paragraph 14 of the "Details of procedure to be followed in the allotment of cadre to the officers of the All-India Services", which reads 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.

9. The Tribunal relied upon the judgment of the Supreme Court reported as *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, wherein the Supreme Court had held that a candidate belonging to a reserved category, though selected in his own merit and wanting to avail benefit of reservation would be entitled to the benefit of reservation for allocation. To put it pithily, law recognizes a person to not only avail the benefit of merit but additionally the privilege conferred by law as a consequence of belonging to a reserved category. The Tribunal noted the observations of the Supreme Court in *Ritesh R. Sah's* case (supra) to the effect that a student whose entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But at the same time the provisions should be so worked that it will not work out to the disadvantage of such candidates. The Tribunal reinforced its view noting another decision of the Supreme Court, pertaining to an OBC candidate who was selected on his own merit but was held entitled for purposes of preferential allocation of service, to be considered as an OBC candidate. The decision is reported as *Union of India (UOI) and Another Vs. Satya Prakash and Others*, ; and we highlight that it was the principle of law which was declared in the said decision which was applied by the Tribunal.

10. Concluding on the issue, in paragraph 7 of the opinion, the Tribunal noted as under:-

7. It is now well established that such allocation would not exhaust the quota of reserved candidates. However, it is based on the laudatory principle that the unreserved category candidates, selected on the basis of reserved in and lower in merit should not steal a march over more meritorious reserved category candidates, though selected on their own merit and treated as general category (unreserved) candidates. Paragraph 14 of the Procedure followed in allotment of cadre is in tune with the views of the Honourable Supreme Court in this regard, as enunciated in *Ritesh R. Sah* (supra). A reading of paragraph 14, as quoted in the preceding paragraph 2 of this order, would show clearly that Ms. Rupanjali, the second respondent, was correctly allocated to the Punjab cadre.

11. It is the language used by the Tribunal in paragraph 7 of its opinion, where the decision concludes, which creates a little confusion with reference to the facts of the instant case. The facts of the instant case would highlight that the petitioner, a candidate belonging to the SC community, is seeking a place in the Cadre allocation to be housed in the Punjab State Cadre on the strength of he being a SC candidate belonging to the State of Punjab and his principal competitor was a similarly situated candidate Ms. Rupanjali who was in merit position was much above the petitioner, as noted above Ms. Rupanjali's merit

position was 53 and that of the petitioner was 84.

12. At the heart of the issue is para 14 of the "Details of procedure to be followed in the allotment of cadre to the officers of the All-India Services", contents whereof have been noted by us in para 9 above.

13. A perusal of para 14 would clearly reveal that it deals with a situation where a reserved category candidate is the focus for being allotted a State Cadre. It requires that at the first instance merit alone has to be taken into account, with reference to the preference, and if on the strength of merit, upon availability of an unreserved "insider" vacancy in the State to which the candidate belongs, allocation against the unreserved "insider" vacancy has to follow. But, if there is no unreserved "insider" vacancy and there exists an "insider" reserved vacancy, said candidate would be entitled to the same and would have preference over another candidate who is lower in the merit position but is also claiming a preferential right to Home State Cadre allocation. This is evident from the fact that the first sentence of the paragraph requires that a case of candidates belonging to reserved category requires then to be first considered for allocation to their Home State against unreserved "insider" vacancy and the second sentence deals with when no unreserved "insider" vacancy is available, entitlement of said candidate to be considered giving benefit of reservation as a reserved candidate for Home State Cadre allocation.

14. Suffice would it be for us to note that keeping in view his merit position and entitlement to be considered only on the strength of merit, Sh. Suprit Singh Gulati scored a march over Ms. Rupanjali when cadre allocation was made pertaining to the one general "insider" vacancy in the State of Punjab. The other "insider" vacancy, being of SC, it necessarily had to be allotted to Ms. Rupanjali who was next in merit, belonging to the State of Punjab, in terms of paragraph 14 of the "Details of procedure to be followed in the allotment of cadre to the officers of the All-India Services".

15. On her being allotted the one "insider" SC vacancy, no other vacancy remained for "insider", to be allotted to the petitioner herein who admittedly is lower in merit than Ms. Rupanjali.

16. During the course of arguments before us, the learned counsel for the petitioner at the outset submitted that the petitioner is not challenging the allocation made to Ms. Rupanjali against one "insider" vacancy reserved for SC candidate. His primary challenge, during the course of the submissions before us, was the shifting of one general "outsider" seat to one "outsider" SC/ST seat. We may state here from the perusal of the impugned order that such a submission was never made during the course of the arguments before the Tribunal.

17. We may note that a submission which was not taken before the Tribunal would be impermissible to be taken at the appellate stage. This we say for the reason that since such a submission was not made, there was no occasion for the Tribunal to consider and deal with the same. Even otherwise, the submission

which has been made by the learned counsel for the petitioner is primarily on the basis of the averments made by the official respondents in their reply to the OA filed before the Tribunal. We intend to quote the relevant lines to understand and deal with the submissions as has been made now before us:-

In Punjab, the Insider SC/ST vacancy has been converted to Outsider SC/ST vacancy and Outsider UR vacancy has been converted to Insider UR vacancy.....

(page 175 of the writ paper book).

...In Punjab, this year (CSE-2007) the Insider" SC/ST vacancy has been converted to an "Outsider" SC/ST vacancy and "Outsider" Unreserved vacancy has been converted to "Insider" Unreserved vacancy. Therefore, the contention of the applicant is not proper and without merit....

(page 184 of the writ paper book)

18. It is a new case set up by the petitioner. In his representation dated December 18, 2008 addressed to the Secretary, Ministry of Personnel and Public Grievances and Pension, Department of Personnel and Training, North Block, New Delhi, his grievance primarily was against Ms. Rupanjali being allocated the SC "insider" vacancy in the Punjab State Cadre as according to him Ms. Rupanjali who had appeared in the CSE 2005 Examination, she declared herself to be a general category candidate whereas in the CSE-2007 Examination she projected herself as a SC candidate even though she was selected in the General Category. The petitioner has not whispered a word about shifting of one general "outsider" vacancy to "outsider" ST vacancy. Even otherwise, there is no whisper/challenge to allocation of Punjab State Cadre to Sh. Joram Beda. Now the challenge by the counsel is clearly an afterthought. In any case, the averments as made by the official respondents in their reply would not better the case of the petitioner. It is not in dispute that the total insider vacancies in the Punjab State Cadre for the CSE-2007 Examination were two. It is also not in dispute that Ms. Rupanjali had been given the "insider" vacancy because of the fact that she is a SC candidate. Both the vacancies having been filled up by persons who are above in the merit, the petitioner cannot have any grievance. Any effect because of any change in the "outsider" vacancy would not have a bearing insofar as cadre allocation of the petitioner is concerned as the said vacancies were meant to be filled by "outsiders" and the said vacancies having been filled by "outsiders" the petitioner cannot have any grievance. In other words, the petitioner claim can be against "insider" vacancies and not "outsider" vacancies.

19. The learned counsel for the petitioner during the course of his submissions relied upon the judgment of the Supreme Court reported as C.M. Thri Vikrama Varma Vs. Avinash Mohanty and Others, . and would contend that the petitioner has a right to be allocated to a State of his choice and cannot be infringed.

20. We do not see any right of the petitioner has been violated in not being allocated to his Home State of Punjab. The facts clearly show that the petitioner

and the other candidates got a fair and just treatment at the time of allocation of cadre. We do not see any infirmity in the conclusion of the Tribunal dismissing the OA filed by the petitioner seeking allocation to Punjab State Cadre.

21. It is apparent that strength is being taken by the petitioner from the pleadings of the respondent in the reply filed to the Original Application, which we have extracted in paragraph 18 above. The respondent has clearly written that the "insider" SC/ST vacancy has been converted to an "outsider" SC/ST vacancy and "outsider" unreserved vacancy has been converted to "insider". During the course of arguments as the position emerged, this pleading is incorrect. It appears to be the result of the author, imparting ink to the thought of the deponent of the affidavit and hence a disconnect. What has actually happened is that Rupanjali, who as per her merit position was entitled to be allocated to the Indian Administrative Service, took additional benefit of being an SC, which was her right, and the result was that in the State of Punjab the SC insider vacancy went to a candidate who was also a meritorious candidate. In their wisdom the respondent, probably to ensure an equal representation in the Indian Administrative Service to all categories of candidates, converted one out of the 4 vacancies to outsider ST. We are not expressing any opinion on the correctness of what the respondent has done for the reason petitioner was competing for the one insider SC vacancy allocated to the State of Punjab and needless to state Rupanjali would be entitled to the same. The writ petition is accordingly dismissed but without there being any orders as to costs.