

(2017) 04 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : 1290 of 2010

S. R. Samuel

APPELLANT

Vs

U.O.I. and anr.

RESPONDENT

Date of Decision : 28-04-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 16](#), [Article 16\(1\)](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomo

Citation : 2017 0 LabIC 3865

Hon'ble Judges : Badar Durrez Ahmed, Alok Aradhe

Bench : DIVISION BENCH

Advocate : R. Viduthalai, K. V. Jagdishvaren, Sindu Sharma, Seema Shekher

Final Decision : Dismissed

Judgement

1. In this writ petition, the petitioner, inter alia, has assailed the validity of the Orders dated 28.12.2009 and 15.01.2010 by the Central

Administrative Tribunal. The petitioner also seeks a direction to the respondents to consider the case of the petitioner for allocating him to the State

Cadre of Tamil Nadu as an insider candidate in the Indian Police Service on the basis of the option given by him.

2. The facts giving rise to filing of this writ petition briefly stated are, that the petitioner belongs to the OBC Category. The petitioner appeared in

the Civil Services Examination conducted in the year 1998 and secured 251st rank in the order of merit. The petitioner gave an option for his

allocation to his home State, namely, Tamil Nadu. However, admittedly, in the year 1999, he was allocated the State of Jammu and Kashmir.

Under the Right to Information Act, 2005, the petitioner submitted an

application, whereupon he learnt that in the year 1996, the roster for allocation for the State of Tamil Nadu was not followed. The petitioner thereafter on 14.09.2005 submitted a representation seeking his allocation to the State of Tamil Nadu. The aforesaid representation was rejected vide order dated 25.07.2006. The petitioner filed an original application before the Central Administrative Tribunal, Chandigarh Bench, which was transferred to Circuit Bench at Jammu. The original application preferred by the petitioner was dismissed by the Central Administrative Tribunal by order dated 18.12.2009. The petitioner filed an application for review which was dismissed vide order dated 15.01.2010. In the aforesaid factual backdrop, the petitioner has approached this Court.

3. Learned senior counsel for the petitioner, while inviting the attention of this Court to communications dated 30.07.1984 and 30/31.05.1985 has submitted that vacancies in every State Cadre were earmarked for "outsider" and "insider" in the ratio of 2:1. However, in the year 1996, the aforesaid roster was not followed in the State of Tamil Nadu, as a result of which, the vacancy in the year 1998 in Tamil Nadu Cadre was shown to be specified for "outsider" whereas the same should have been specified for an "insider". It is submitted that the petitioner has a right to fair and equitable treatment in the matter of allocation in view of Article 14 and 16(1) of the Constitution of India. Lastly, it is urged that the finding recorded by the Tribunal that the original application filed by the petitioner was barred by limitation in view of Section 21 of the Administrative Tribunals Act, 1985 (for short "the Act"), is perverse, inasmuch as, the petitioner had filed the original application in the year 2007 and the impugned order was passed by the respondent No.1 on 25.07.2006. In support of his submissions, learned senior counsel for the petitioner has placed reliance on a decision of the Supreme Court in the case of C.M. THRI VIKRAM VARMA V. AVINASH MOHANTY AND OTHERS:

(2011) 7 SCC 385.

4. On the other hand, learned ASGI for respondent No.1 has submitted that the impugned order passed by the Central Administrative Tribunal does not suffer from any infirmity much less any error apparent on the face of the record. It is, further, submitted that the petitioner had approached the Central Administrative Tribunal belatedly, as the petitioner knew about his

allotment to the state cadre of Jammu and Kashmir in the year 1999.

However, the original application was filed before the Central Administrative Tribunal in the year 2007. Therefore, the Tribunal has rightly rejected

the application as being barred by limitation. It is, further, submitted that the petitioner has no right to claim allotment to a State of his preference or

his home State. It is also submitted that in the roster, vacancies for the year 1996 as well as 1997 were rightly earmarked and even if the candidate

did not join the slot meant for him/her, the vacancy was not required to be carried forward and was taken to have been consumed. It is also

pointed out that two candidates, namely, J. Justin Mohan, and Ms. S. Malarvizhi were above the petitioner and in any case, no benefit would have

accrued to the petitioner. Lastly, it is urged that if any interference at this stage is made, the same shall have a cascading effect. In support of her

submissions, learned ASGI has placed reliance on the decisions of the Supreme Court in the cases of Union of India and Others v. Rajiv Yadav,

IAS and Others: AIR 1995 SC 14, Union of India v. Mhathung Kithan and Others: AIR 1997 SC 25 and G. Srinivas Roa v. Union of India and

Others: (2011) 8 SCC 123. Learned senior Additional Advocate General has supported the orders passed by the Tribunal.

5. We have considered the rival submissions made at the bar and have perused the record. It is trite law that this Court in exercise of powers of

Judicial Review cannot sit in appeal over the judgment of a Tribunal. The supervisory jurisdiction conferred on the Court is limited to seeing that the

Tribunal functions within the limits of its authority and its decisions do not occasion miscarriage of justice (See State of U.P. and Others v. Rakesh

Kumar Keshari and Anr: (2011) 5 SCC 341). At this stage, it is apposite to take note of Section 20(1) and Section 21(1) of the Act.

20. Application not to be admitted unless other remedy exhausted.-(1) A Tribunal shall not ordinarily admit an application unless it is

satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of

grievances.

21. Limitation.-(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with

the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause(b) of sub-section (2) of section 20 has been made and

a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of

the said period of six months.

6. From conjoint reading of Section 20(1) and Section 21(1), it is evident that the remedy referred to in Section 20(1) has to be statutory remedy.

When a specific query was put to learned senior counsel for the petitioner by this Court whether the petitioner had any remedy available to him

against his allocation under the Service Rules, learned senior counsel for the petitioner fairly submitted that no such remedy is provided under the

Service Rules. Admittedly in the instant case, the petitioner was aware about his allocation to the State of Jammu and Kashmir. However, he

submitted a representation for the first time on 14.09.2005, that is, approximately after a period of six years. No cogent explanation has been

offered for maintaining the stoic silence from the year 1999 till 14.09.2005. Therefore, in our considered opinion, the finding recorded by the

Tribunal that the original application filed by the petitioner suffers from unexplained delay and is barred by limitation cannot by any stretch of

imagination be termed as perverse.

7. It is a well settled legal position that a person has no right to claim a State cadre of his choice or his home State and the Central Government is

under no legal obligation to have options or even preferences from the officer concerned. (See: Union of India v. Mhathung Kithan and Others

(supra)). The Tribunal after referring to the 30 point vacancy roster for the period from 1993 to 2000 held that two vacancies were meant for

general category and one each for OBC category and SC/ST category candidates for the year 1996. Out of two "insider" vacancies, one was

filled by general category candidate and another by SC/ST category candidate. It has further been held that as outsider general category candidate

has qualified from Tamil Nadu in the Civil Services Examination, 1996, the said vacancy was filled from a general category candidate and

accordingly the allocations were made. Similarly for the Civil Services

Examination, 1997, four vacancies were to be filled up for the IPS cadre of Tamil Nadu and as per 30 point roster, two vacancies each were meant for "insider" and "outsider" candidates and accordingly the four candidates were allocated the State of Tamil Nadu. Thus, it is evident that respondents have not carried forward the slots that had remained vacant, if any, to the subsequent years for adjustment from future candidates. The Supreme Court in the case of *Mhathung Kithan* (supra) held that there is no rule to carry forward such vacancies. For yet another reason, no relief can be granted to the petitioner. The petitioner as already stated was allocated to the State of Jammu and Kashmir in the year 1999, yet for the first time the representation was submitted on 14.09.2005, i.e. after six years. The delay in challenging the allocation disentitles the petitioner to seek any relief. In the case of *G. Srinivas Rao* (supra), the Supreme Court declined to grant relief to a candidate on the ground of delay as the order of allocation which was made in the year 1999 was challenged in the year 2001.

8. For the aforementioned reasons, we do not find any merit in the contention of the petitioner that the case of the petitioner has either not been treated fairly or equitable treatment has not been afforded to him in the matter of allocation. No case of infringement of fundamental rights of the petitioner either under Article 14 or 16 is made out. The impugned orders neither suffer from any infirmity nor any error apparent on the face of the record, warranting interference of this Court.

9. In view of the preceding analysis, we do not find any merit in the writ petition. The same fails and is hereby dismissed.