
(2014) 07 DEL CK 0049
In the Delhi High Court
Case No : W.P. (C) 4515/2013

Union of India

APPELLANT

Vs

Kurma Raom

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Citation : (2015) 213 DLT 596

Hon'ble Judges : Vipin Sanghi, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : R.V. Sinha, Advocate for the Appellant; Aditya Ranjan, Advocate for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—The Union of India (UOI) challenges the order dated 28.02.2013 of the Central Administrative Tribunal (CAT/Tribunal) passed in O.A. No. 1555/2012, whereby it quashed the cadre allocation of the respondent/applicant, and directed reconsideration of the entire issue.

2. The brief facts are that the respondent/applicant was declared as a successful OBC candidate in the Civil Services Examination, 2010. The UOI, after taking into consideration his performance and the prevailing guidelines, circulars and other norms, allocated Karnataka cadre to the respondent/applicant.

3. The respondent/applicant, who had applied for his home cadre—which is Andhra Pradesh, complained that the denial of his home cadre was arbitrary. He approached the tribunal, which by the impugned order has allowed the application

4. The UOI contends that the impugned order is erroneous, inasmuch, as, it has ignored the binding ruling of the Supreme Court in Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, , which had clearly ruled that a public servant has no right to claim a particular cadre. It was argued that for the relevant year i.e. 2010, there were six vacancies, out of which five were earmarked for general category and one for OBC category. It was submitted that

the tribunal's finding that instead of one insider vacancy, there ought to have been two insider vacancies, is not supported by any reason. It was urged that the tribunal's reasoning would result in a perpetual redetermination of insider vacancy of the Andhra Pradesh cadre, since it, in effect, directed that sacrosanct of the insider vacancies ought to be ensured, under all circumstances, each year.

5. Learned counsel for the respondent/applicant relied upon the findings of the tribunal. He stated that in terms of para 4 and para 9 of the cadre allocation policy, the tribunal's finding with respect to existence of two insider vacancies cannot be faulted. It was submitted that the denial of insider vacancy to the respondent would result in hardship and was, consequentially, judicially reviewable. For these reasons, learned counsel submits that this Court should not interfere with the order of the tribunal.

6. The essential findings which led the tribunal to allow the respondents application are extracted below:

9. The facts of the case are not disputed. Admittedly for Civil Services Examination 2010 there were 6 vacancies in Andhra Pradesh Cadre, 5 for General and 1 for OBC. If the roster for determining outsider/insider vacancy was applied according to the policy then for 6 vacancies there should have been 2 vacancies for insider. However, as admitted by the respondents 1 insider vacancy had been consumed by Ms. Dasari of Civil Services Examination 2009 who was appointed under Court orders as an Additional Officer in comparison to the number of vacancies initially determined for Andhra Pradesh for Civil Services Examination 2009. Thus, had Ms. Dasari not been appointed, admittedly, 2 insider vacancies would have been available for Civil Services Examination 2010 candidates. Respondents chose to appoint Ms. Dasari as an Additional Officer without curtailing the vacancies earmarked for 2010 Examination and without disturbing the cadre allocation of Civil Services Examination 2009 selected candidates. Thus, interest of 2009 examinees was fully protected and interest of 2010 examinees was protected only to the extent that their vacancies were not curtailed. However, in our opinion, where the respondents erred was in not protecting the interest of 2010 examinees fully as they had done for 2009 examinees. To that extent, there has been discrimination in implementation of the cadre allocations. If the respondents could appoint Ms. Dasari as an Additional Officer in view of court's orders in her favour without curtailing the vacancies of 2010 examination, they should also not have curtailed an insider slot of Andhra Cadre meant for candidates of 2010 examination. Her allocation as an insider to Andhra Cadre should have been over and above the insider slots meant for 2010 candidates. While this would have disturbed the 2:1 ratio between outsiders and insiders in 2010 year as a unit but respondents have themselves admitted that they endeavor to achieve the prescribed ratio over a period of time and not in a particular year.

10. We do not agree with the respondents that cadre allocation policy is not subject to judicial review because there is no statutory provision, binding

instruction or law on the subject. This, in our opinion, is misconceived. It is the duty of the State to act in a fair, equitable and just manner and if in judicial review it is found that there has been discrimination against any one concerned in the manner in which the policy has been framed or applied then it would be a fit case for judicial intervention. In the instant case, the respondents have erred by discriminating against 2010 examinees by not fully protecting their interest while taking care of the interest of 2009 examinees as well as Ms. Dasari.

7. The respondent/applicant relied upon the office memorandum of 10.04.2008 which contains the guidelines for cadre allocation. Para 4 and 9 of the memorandum reads as follows:

4. The insider and outsider vacancies in a cadre shall be determined on the basis of the insider-outsider roster with points as follows: O-I-O-O-I-O and so on, so as to facilitate the maintenance of the ratio of 1:2 between the insiders and the outsiders. It is, however, clarified that depending on the actual filling of the insider vacancies, the ratio between insiders and outsiders in a cadre at any point of time may, however, be less than 1: 2. There would be the following insider-outsider rosters for each cadre: first, for determining the total insiders and outsiders vacancies in the cadre; second, for determining the OBC insider/outsider vacancies and the SC/ST insider/outsider vacancies; and third, for determining SC insider/outsider vacancies and ST insider/outsider vacancies. In the first step, the total insider/outsider vacancies in a cadre shall be determined on the basis of the first roster for the cadre. In the second step, the OBC insider/outsider vacancies and the SC/ST (as one block) insider/outsider vacancies shall be determined on the basis of the second roster for the cadre. And in the last step, the SC insider/outsider vacancies and the ST insider/outsider vacancies shall be determined on the basis of the third roster for the cadre. The UR insider/outsider vacancies for the cadre shall be determined by subtracting the total reserved insider and the total reserved outsider vacancies from the total insider vacancies and the total outsider vacancies respectively. The accounting in the rosters (for total vacancies as well as category-wise vacancies) shall be on the basis of actual filling.

9. Notwithstanding what has been said above a reserved category candidate selected on general standards shall be eligible for allocation against the available insider unreserved vacancy as per his merit and preference. But if he cannot be allocated against such vacancy, for he is lower in rank as compared with other general category candidates, he shall be considered for allocation as per his merit and preference against the available insider vacancy of his category.

8. As is evident from the tribunal's finding, its directions for redetermination of the respondent cadre allocation is entirely based upon the conclusion that two insider vacancies ought to have been for the State of Andhra Pradesh. Unfortunately, it is evident from a reading of para 9 of the impugned order that there is no reasoning in support thereof. A superficial application of para 4 of the 2008 memorandum might lead one to conclude that two insider vacancies ought

to logically follow. However, the subsequent portions of the said para makes it clear that the ratio 0-1-0-0-1-0 (where "0" denotes outsider vacancy and "1" denotes insider vacancy) is not to be universally applied. This is evident from the clarification that depending on the actual outsider vacancy in the cadre at any point of time, the ratio might, however, be much less than 1:2:: insider: outsider. In any event, there is nothing to suggest that the Tribunal applied its mind to examine whether the two insider vacancies would be general category or OBC category vacancies only, and one of them would not be a SC category vacancy.

9. Furthermore, the procedural steps indicated in Para 4 elaborates the adoption of an elaborate methodology to determine the actual insider vacancies i.e. preparation of not less than three lists and a final determination. The reasoning of the Tribunal nowhere indicates that these steps were followed nor has it independently indicated how it concluded that two insider vacancies did exist. On this ground alone, the order of the tribunal, in our opinion, ought to be set aside.

10. There are two compelling reasons, which constrain this Court to disapprove with the approach of the tribunal. The first is that the Tribunal was itself informed that a previous direction of the Supreme Court resulted in the appointment of Ms. Dasari, which had its implication in the insider vacancies for the succeeding year. It, therefore, ought not to have directed that the Union of India should ensure the integrity of the ratio of two insiders in the Andhra Pradesh cadre. Such a direction has wide implications in that it might disturb the insider/outside ratio of the entire cadre officers available for the particular State. The last and perhaps the most important reason which persuades us to disapprove with the finding of the tribunal is that no candidate-including those who are deemed meritorious can have a right to insist that they ought to be allotted a particular cadre. Rajesh Yadav (supra), a three judge bench decision is categorical on this aspect; it is one thing to say that all administrative orders are subject to judicial review, but entirely another to subject judicial review standards and apply such a deep level of scrutiny to result in the Tribunal itself becoming the decision maker, which has happened in this case. Such an exercise is clearly impermissible and the Tribunal ought not to have resorted to it.

11. For the above reasons, we are of the opinion that the impugned order cannot be sustained. It is, accordingly, set aside.

12. The writ petition is allowed in the aforesaid terms.